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Report Overview:
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Air (25)			
It's Time for Presidential Candidates to Talk About Science	**08/20/2015**	**Newsweek**	**NY**
Draft permit issued for Finger Lakes power plant	**08/14/2015**	**Advocate Online, The**	**CT**
Groups protest LNG storage tank proposal at Fields Point in Providence	**08/14/2015**	**Providence Journal Online, The**	**RI**
Officials to mark 'milestone' in Kirtland fuel spill cleanup	**08/13/2015**	**Advocate Online, The**	**CT**
ExxonMobil fined following probe into refinery explosion	**08/13/2015**	**Advocate Online, The**	**CT**
Air pollution killing 4,000 in China a day, US study finds	**08/13/2015**	**Advocate Online, The**	**CT**
Draft permit issued for Finger Lakes power plant	**08/13/2015**	**Associated Press**	**NY**
Climate change and a hotter Rhode Island: As days warm, emergency visits, deaths rise	**08/13/2015**	**College Hill Independent - Online**	**RI**
OUR OPINION: Legislature should consider lifting cap on solar power	**08/13/2015**	**Enterprise - Online, The**	**MA**

UNH scientists provide new tools for predicting arrival, impact of solar storms	08/13/2015	Foster's Daily Democrat Online	NH
Coal industry officials and critics converge on Gillette	08/13/2015	Greenwich Time Online	CT
ENVIRONMENTALISTS RAMP UP PUSH FOR EPA TO TIGHTEN PENDING UTILITY ELG	08/13/2015	Inside EPA	VA
STATES BACK ENVIRONMENTALISTS' PUSH FOR STRICT DOMESTIC AIRCRAFT GHG LIMITS	08/13/2015	Inside EPA	VA
OKLAHOMA CITES EPA'S MERCURY RULE PLAN TO REITERATE ESPS CHALLENGE	08/13/2015	Inside EPA	VA
EPA OUTLINES PLAN FOR UTILITY MACT REMAND IN OPPOSITION TO STAY REQUEST	08/13/2015	Inside EPA	VA
EPA FLOATS PLAN TO PRECLUDE SOME ADVERSE AIR RULINGS FROM NATIONAL EFFECT	08/13/2015	Inside EPA	VA
SEVERAL STATES FILE LEGAL CHALLENGE TO EPA'S SSM EMISSIONS 'SIP CALL'	08/13/2015	Inside EPA	VA
EPA, SAB NEAR AGREEMENT ON ALTERNATIVE BIOMASS CARBON FRAMEWORK	08/13/2015	Inside EPA	VA
D.C. CIRCUIT'S CSAPR RULING CASTS DOUBT OVER FUTURE INTERSTATE AIR TRADING	08/13/2015	Inside EPA	VA
INDUSTRY MAKES LATE PUSH TO EASE EPA'S METHANE PLAN FOR 'NEW' LANDFILLS	08/13/2015	Inside EPA	VA
FACING SUITS, EPA'S FINAL ESPS LAYS GROUND FOR BROAD LEGAL DEFENSE	08/13/2015	Inside EPA	VA
DOJ DEFENDS CWA RULE 'NEXUS' TEST, FIGHTS PUSH FOR INJUNCTION OF POLICY	08/13/2015	Inside EPA	VA
Air Pollution in China Is Tied to 1.6 Million Deaths a Year	08/13/2015	New York Times, The	NY
Money, politics and global warming make for a dangerous mix ; Because of political opposition, government action to lower	08/13/2015	Portland Press Herald	ME

carbon emissions may fall short.			
Tyngsboro waste dump will soon be clean energy source	**08/13/2015**	**Sun Online**	**MA**

Brownfields / Superfund / Other Cleanups (14)

Vermont officials to discuss Lake Champlain cleanup plans	**08/14/2015**	**Advocate Online, The**	**CT**
R.I. communities receiving brownfields grants to clean up sites	**08/14/2015**	**Providence Journal Online, The**	**RI**
Vermont officials to discuss Lake Champlain cleanup plans	**08/13/2015**	**Associated Press**	**NY**
EPA test results show mine spill unleashed highly toxic stew	**08/13/2015**	**Associated Press Online**	**NY**
Damages in Colorado mine spill will take years to tabulate	**08/13/2015**	**Boston Herald Online**	**MA**
EPA test results show mine spill unleashed highly toxic stew	**08/13/2015**	**Boston Herald Online**	**MA**
EPA test results show mine spill unleashed highly toxic stew	**08/13/2015**	**Foster's Daily Democrat Online**	**NH**
'Operation Clean Sweep' Coming To Hartford's Most Blighted Streets	**08/13/2015**	**Hartford Courant Online**	**CT**
EPA'S COLORADO SPILL COULD BOOST PUSH FOR BROAD MINING POLICY REVISIONS	**08/13/2015**	**Inside EPA**	**VA**
EPA FACES UNCLEAR SUPERFUND LIABILITY FOR COLORADO MINE WASTEWATER SPILL	**08/13/2015**	**Inside EPA**	**VA**
EPA REVISING PFC WATER CLEANUP ORDER AFTER DISCUSSIONS WITH AIR FORCE	**08/13/2015**	**Inside EPA**	**VA**
EPA chief says polluted Animas River 'seems to be restoring itself'	**08/13/2015**	**Keene Sentinel Online**	**NH**
Damages in Toxic Colo. Mine Spill Will Take Years to Tabulate | NECN	**08/13/2015**	**NECN/New England Cable News Online**	**MA**
Central Mass Recycled Metals in Millbury fined for mercury, asbestos violations	**08/13/2015**	**Republican Online**	**MA**

Climate Change (12)

Earth Overshoot Day: Consuming More	**08/14/2015**	**Boston.com**	**MA**

Than The Earth Can Give			
A climate problem that's understated	**08/14/2015**	**Washington Post Online**	**DC**
Solid waste master plan suggests further steps to reduce trash thrown away in Amherst	**08/13/2015**	**Amherst Bulletin - Online**	**MA**
Keystone XL: US review taking 5 times longer than average - The Boston Globe	**08/13/2015**	**Boston Globe Online**	**MA**
Editorial: Seaport council can provide regional boost	**08/13/2015**	**Eagle-Tribune Online, The**	**MA**
EPA NOMINEES SEEN HINDERED BY AGENCY SLOWING RESPONSES TO CONGRESS	**08/13/2015**	**Inside EPA**	**VA**
Climate change is reshaping Alaska, wildfire experts fear	**08/13/2015**	**USA Today Online**	**VA**
The EPA's Gina McCarthy on climate change and picking a better job title	**08/13/2015**	**Washington Post Online**	**DC**
The U.S. wind energy boom couldn't be coming at a better time	**08/13/2015**	**Washington Post Online**	**DC**
If global warming really did pause, the planet seems to have pressed 'play' again	**08/13/2015**	**Washington Post Online**	**DC**
Gerson: We need a miracle on climate change	**08/13/2015**	**Washington Post Online**	**DC**
The melting of Antarctica is bad news for humans. But it might make penguins pretty happy.	**08/13/2015**	**Washington Post Online**	**DC**

Energy Issues (5)

Sell Your Unused Car Battery Power; Save the Planet	**08/20/2015**	**Newsweek**	**NY**
A smaller and more restrictive Renewable Energy Fund reopens	**08/14/2015**	**New Hampshire Union Leader Online**	**NH**
Major General Keynotes Southern Solar Summit on Sept. 10 on Army's Solar Investment	**08/13/2015**	**Advocate Online, The**	**CT**
Energy-storing batteries will cut peak usage in Glasgow	**08/13/2015**	**Associated Press**	**NY**
Gas pipeline draws fire in Lunenburg	**08/13/2015**	**Sun Online**	**MA**

Research and Development (4)

Proposed ban on caged foods could hike prices		**Derry News - Online**	
EPA Urged To Weigh Industry Data To Inform Naphthalene Risk Assessment	**08/13/20**	**Inside EPA**	**VA**
EPA Floats Early Data To Support Future Risk Review Of Flame Retardants	**08/13/20**	**Inside EPA**	**VA**
INDUSTRY, SBA URGE EPA TO RECONSIDER, NARROW TSCA NANO REPORTING RULE	**08/13/20**	**Inside EPA**	**VA**

Toxics (3)

Australian sailors wary of Rio debris as much as pollution	**08/13/20**	**Associated Press**	**NY**
SENATE REPUBLICANS INTRODUCE LEGISLATION TO SOFTEN EPA LEAD PAINT RULES	**08/13/20**	**Inside EPA**	**VA**
Colorado: Water Near Mine at Pre-Spill Toxicity	**08/13/20**	**New York Times, The**	**NY**

Water (12)

EPA test results show mine spill unleashed highly toxic stew - The Boston Globe	**08/14/20**	**Boston Globe Online**	**MA**
EPA: Water quality returning to normal after Colo. spill	**08/14/20**	**USA Today Online**	**VA**
The Latest: EPA chief visits New Mexico to see spill fallout	**08/13/20**	**Advocate Online, The**	**CT**
The Latest: Colorado governor drinks river water after spill	**08/13/20**	**Advocate Online, The**	**CT**
The Latest: EPA: High toxic metal levels after mine spill	**08/13/20**	**Associated Press Online**	**NY**
Algae bloom fouls Charles River once again	**08/13/20**	**Boston Globe Online**	**MA**
The Latest: EPA chief visits New Mexico to see spill fallout	**08/13/20**	**Greenwich Time Online**	**CT**
Down to the wire: Final sewer plant decision iminent	**08/13/20**	**Hampton Union Online, The**	**NH**
EPA URGES COURT TO REJECT REHEARING BID IN SUIT OVER CWA TESTING MEMOS	**08/13/20**	**Inside EPA**	**VA**
EPA WATER POLICY HINTS AT LIMITS ON AGENCY'S 'INTERPRETATIVE' RULEMAKING	**08/13/20**	**Inside EPA**	**VA**

The Latest: EPA Chief Visits New Mexico to See Spill Fallout		**New York Times Online, The**	
Mine waste has fouled the Animas River before	08/13/20	USA Today Online	VA

Other (5)

State awards more than $12M in water constructions loans	**08/13/20**	**Associated Press**	**NY**
Attorney: City wrong to eliminate irrigation meters	**08/13/20**	**Hampton Union - Online, The**	**NH**
EPA: Colo. Contaminated Water Being Treated	**08/13/20**	**USA Today Online**	**VA**
Tribe warns residents not to use EPA forms after spill	**08/13/20**	**USA Today Online**	**VA**
EPA says Animas River on the mend after toxic spill	**08/13/20**	**USA Today Online**	**VA**

News Headline: It's Time for Presidential Candidates to Talk About Science |

Outlet Full Name: Newsweek
News Text: When Charles Darwin set sail from Plymouth, England, on the HMS Beagle in 1831, the British biologist fell seasick almost immediately, and he remained nauseated for most of the next five years on that ship. Yet the journey, however arduous for Darwin, paid off for the rest of us in one of the greatest scientific theories of all time. After studying the South American coast for several years, Darwin made his way to the Galapagos Islands, where he grew curious about the finches and their various-sized beaks. How, he wondered, had these birds on a small archipelago hundreds of miles from the mainland come to differ so greatly from others of the same species? "We seem to be brought somewhat near to that great fact--that mystery of mysteries--the appearance of new beings on this earth," he wrote in his journal. He solved the mystery of mysteries with his breakthrough theory. Today, evolution is settled science.

Fast-forward 176 years, a British-born American author and screenwriter named Matthew Chapman was lolling on a couch in his Manhattan apartment, watching a presidential primary debate. It was 2007, and while Chapman wasn't exactly nauseated by what he was hearing, he was noting with dismay (not for the first time) that the candidates never discussed science--even though any future president's most vexing challenges, from Iran's nukes to global warming, Internet security and women's reproductive politics, are impossible to discuss without dealing with physics, math and biology.

That's when he had his own breakthrough.

Chapman's scientific bona fides were mostly genetic. He happens to be the great-great-grandson of Charles Darwin, and he had recently completed a memoir about growing up Darwin--being the literary black sheep at the end of a long line of famed scientists. As part of his research for that book, he studied the Scopes trial, in which politician William Jennings Bryan faced off against lawyer Clarence Darrow on the teaching of evolution in public school, so the politics of science in American life were more on his mind than usual. "Everything in my family was assessed through some form of the scientific method," says Chapman, who moved from London to Hollywood in the 1980s to work as a director and screenwriter, and now lives in New York. "It was just really peculiar to see people we were going to give trust to not addressing either the scientific issues nor the method by which people assess truth in the best possible way."

Chapman's subsequent voyage into American politics has been not unlike his ancestor's on the Beagle--queasy and slow to produce results. His grand idea: Every four years, American presidential candidates should have one debate solely about science. He enlisted fellow author and screenwriter Shawn Otto, author of a book on the history of science in American politics, and together they founded Science Debate. They rounded up 28 Nobel laureates, 108 college and university presidents, the National Academy of Sciences and a long list of artists, writers and industry leaders, and commissioned research and polling to examine how presidential candidates talk about science. They also invited candidates to a debate in 2008 and got ignored, twice.

This election cycle, Chapman and his advisory board--which includes heavyweights such as Norm Augustine, a past CEO of Lockheed, and former Minnesota Governor Arne Carlson--believe they have a better chance. They are working with the National Geographic Channel and Arizona State University to again attempt to stage and broadcast a presidential science debate. Darwin's descendant says he's not discouraged by previous failures to get the likes of Donald Trump and Bernie Sanders to explain how they'd incorporate science into White House decision-making. "I believe that there will come a time when it will seem as odd for a candidate not to attend a debate on science as it would now seem odd for one not to attend a debate on foreign or domestic policy or the economy," he says.

But foreign policy debaters agree that a place called Iran exists, and domestic policy opponents don't differ on how many Americans receive Medicare. A science debate, however, would begin and end with a profound disagreement over facts that a vast majority of scientists say are irrefutable.

A Snowball in Senate Hell

None of the major candidates has yet agreed to participate in Chapman's debate. But none can deny that science is at the core of many of today's most contentious battles. Take the Iran nuclear deal. The international negotiating teams in Vienna this

summer included not only diplomats but also physicists, without whose expertise the participants would have never gotten past chatting about where to buy Sacher torte. Everyone in the room, from U.S. Secretary of State John Kerry on down, had to be fluent in the arcana of uranium processing, understand the difference between an IR-1 and an IR-2m centrifuge, decode what it means to limit a reactor to " not exceed 20 MWth" and understand that "bake times" didn't refer to Betty Crocker's test kitchen.

The anointed MVP of the American team was not Kerry, but Energy Secretary Ernest Moniz, an MIT physicist instantly recognizable as a scientist by his slightly-tamer-than-Albert-Einstein's gray hair. Moniz is credited with having bridged one of the big divides by allowing the Iranians to keep a cherished, fortified nuclear research bunker called Fordo after persuading them to devote its centrifuges to medical isotopes rather than potential bomb fuel.

When Moniz returned from Vienna, he went on a congressional blitz, explaining the deal's intricacies to Republican hawks who want to kill it. The GOP has presented some valid scientific evidence to support its objections, but the spectacle has also led to some awkward moments. New York Times reporter Jonathan Weisman, covering one Senate hearing, drily tweeted: "Now Sen. Ron Johnson is lecturing MIT physicist Ernest Moniz on electro-magnetic pulse weapons."

A bitter divide rooted in biology has provoked one of the nation's most intractable political conflicts: legal abortion. Last month's release of undercover videos of Planned Parenthood leaders discussing fetal tissue harvesting unleashed another round of political attacks on the organization. Planned Parenthood President Cecile Richards apologized for the doctor's casual tone about crushing fetal skulls, but her organization maintains that gruesome discussions are typical medical talk. As congressional committees gear up to hold hearings on whether to defund Planned Parenthood's contraception programs in retaliation for the revelations, politicians plan to rely on scientists when considering standard operating procedure for organ donations from cadavers and fetuses, as well as the larger questions of fetal pain and when human life begins. Or not.

By far, the most contentious science issue of our time is climate change, pitting the global science establishment against the global--but far better-financed--energy industry. Almost every week, scientists reveal direr consequences of humanity's carbon emissions, including July's announcement from former NASA planetary scientist James Hansen and other leaders in the field that sea levels could rise 10 feet in 50 years, far exceeding previous estimates. Obama managed to get re-elected in 2012 without much talk of global warming. Safely into his second term, he now deems it of paramount concern, and in August unveiled an ambitious Clean Power Plan to reduce emissions by 32 percent of 2005 levels by 2030. "I'm convinced no challenge provides a greater threat to the future of the planet," Obama said. "There is such a thing as being too late."

On Capitol Hill, Republican leaders are acting now--by hauling in NASA scientists

to explain why they are wasting taxpayer money on tracking rising Earth temperatures instead of flying to Mars (their observations found 2014 to be the hottest year on record). The chairman of the Senate Environment and Public Works Committee, James Inhofe, tossed a snowball on the Senate floor to point out that the planet probably isn't warming. Senator Ted Cruz, who chairs the Subcommittee on Space, Science and Competitiveness, has pushed NASA to stop monitoring earthly temps and prefers to talk about science fiction, most recently assuring The New York Times that Star Trek's Captain Kirk was a Republican.

With few exceptions--Al Gore, Newt Gingrich--modern American presidential candidates rarely discuss science. The Founding Fathers, though, were devoted to the scientific method, and science was at the heart of the national idea. On July 4, 1776, as the Declaration of Independence was being adopted, Thomas Jefferson was recording local temperatures as part of a research project. Stories about Ben Franklin's experiments with lightning and the kite are well-known. The founder of the Smithsonian, America's greatest museum and first scientific institution, was a British scientist. Like many others in his field, he believed the new democracy across the Atlantic would produce great scientific advances.

America did become the global leader in science and technology. But 239 years after the founding, many Americans, and many of our elected leaders, suspect scientists and distrust their conclusions. We all know the Professor on Gilligan's Island or the grad students on CBS's Big Bang Theory, but few can call to mind a living American scientist. The one most Americans can name, Einstein, feared this obliviousness so much that in 1946, less than a year after the U.S. dropped an atomic bomb on Hiroshima, he tried to raise money to fund a national campaign to push for more public awareness of the science behind political decision-making, especially with respect to war and weapons. "The unleashed power of the atom has changed everything save our modes of thinking and we thus drift toward unparalleled catastrophe," Einstein wrote. He didn't get his campaign.

There are many reasons Americans now distrust science, and the most valid is that all scientific research has an element of uncertainty and is subject to repeated confirmation. Then there are other causes: an anti-science strain among religious fundamentalists, as well as contrarian pseudoscience, financed by vested interests, like those now aimed at climate change and previously the safety of cigarettes.

Partisan sentiment toward science has shifted 180 degrees since the Cold War, when Republicans were the pro-science party and liberal Democrats distrusted its relationship to the military. Democrats used to be the party of astrology and the New Age. Certain that science's mushroom cloud doomed humanity, novelist Kurt Vonnegut wrote, "Only in superstition is there hope." Now the pendulum has swung, and Republicans are more often distrustful of science. Of Democrats and Democratic-leaning independents, 83 percent think government investment in basic scientific research pays off in the long run, Pew researchers found. A smaller majority--62 percent--of Republicans agree, while 33 percent say such investments are pointless.

The party shift dates to the early '90s, as more and more severe climate change predictions threatened the energy sector--a major GOP funding base. Today, 87 percent of scientists believe human activity is causing global warming, according to Pew, and 71 percent of Democrats say the Earth is warming because of human activity, while only 27 percent of Republicans agree with that statement. And just 43 percent of Republicans accept the theory of evolution, compared with 67 percent of Democrats.

To be fair, Democrats are not uniformly pro-science on many issues, including global warming. They can be found protecting coal interests and tend to be against nuclear power, even though it's a source of carbon-free energy that scientists tend to support. And like Republicans, their ranks include anti-vaxxers and a large cohort who think genetically modified organisms (GMOs) foods are unsafe--opinions at odds with most peer-reviewed science.

Modern science is based on a mode of inquiry developed by 17th century European thinkers that's sometimes called the scientific method, which Darwin's descendant refers to reverentially above. It entails observing the natural world, questioning what one sees and then conducting experiments to gather measurable, empirical evidence to answer those queries.

For laypeople, understanding any scientific issue--climate change, vaccinations, GMOs, cyberhacking and digital surveillance, to name a few--requires a rudimentary understanding of the scientific method and a level of trust that its results, when confirmed, are right.

The Pew survey found that on many issues, Americans don't have that trust. Americans respect but don't necessarily believe scientists, and that is true across the political spectrum. That distrust is at the heart of the call for a science debate. "Leading the national discussion requires some basic knowledge of what the important issues are, what is known and not known, and what new efforts need to be commenced," says physicist Lawrence Krauss. "Scientific data is not Democratic or Republican."

We Need to Talk About Sandy

In recent presidential elections, both parties have avoided speaking about climate change, and so have journalists on the campaign trail. The League of Conservation Voters ran the numbers and found that by January 25, 2008, journalists had conducted 171 interviews with the presidential candidates, and of the 2,975 questions asked, only six mentioned the words global warming or climate change, while three mentioned UFOs. In 2012, after a year of record-breaking heat, drought and Arctic ice melt, none of the moderators in the three general-election presidential debates asked about climate change, nor did the candidates broach the topic. The closest the candidates came to a debate on science arrived during their nominating conventions.

Standing before fellow Republicans in Tampa, Florida, Mitt Romney joked about a Moses-like Obama promising to "slow the rise of the oceans" and "heal the planet." At the Democratic National Convention in Charlotte, North Carolina, Obama stated, "Climate change is not a hoax. More droughts and floods and wildfires are not a joke. They are a threat to our children's future, and in this election you can do something about it."

And that was it, until Superstorm Sandy's inundation of lower Manhattan and New Jersey during the final hours of the campaign forced candidates to cancel scheduled activities and journalists to discuss extreme weather.

The current presidential cycle promises to be different. Whether or not candidates can be herded into a public science debate, they're already staking out positions. "There's clearly been an uptick in discussion [of climate change] in both of the primary fights over what we saw in 2012," says Brad Johnson, with the climate science campaign Forecast the Facts.

Most leading Republican candidates are on record refuting mainstream climate science. Cruz said in the last 15 years "there has been no recorded warming," Mike Huckabee has called global warming a hoax, and Jeb Bush and Rick Santorum have said the planet's getting hotter but doubt that human-produced greenhouse gases are contributing mightily toward it. Rand Paul said he believes the Earth goes through cycles of warming and cooling and he doesn't know why. Scott Walker has been a keynote speaker at the Heartland Institute, one of the chief anti-climate change organizations. After Sandy swamped his state in 2012, New Jersey Governor Chris Christie declined to blame Sandy on global warming, but he has recently said "global warming is real." Senator Lindsey Graham accepts climate scientists' conclusions as fact and has said he wants to combat the issue in a business-friendly way. (This after Graham, John McCain and Hillary Clinton traveled to Alaska to see the effects of climate change.)

On the Democratic side, Clinton released a YouTube video last month talking about her responsibility for the planet as a grandmother and humorously depicting her potential Republican opponents as "mad scientists," complete with old-time Frankenstein movie effects. But the issue is almost as tricky for her as it is for the GOP. In July, she faced demands in New Hampshire for a "yes or no" answer about banning the extraction of fossil fuels from public grounds. "The answer is no until we get alternatives into place," Clinton hedged. Hecklers, scenting a waffle, started chanting, "Act on climate!"

'Doubt Is Our Product'

How would a science debate work? The way Chapman and his friends envision it, candidates would not be called upon to don lab coats and perform experiments before an audience of millions, as diverting as that spectacle might be. They want a debate like the domestic and foreign policy debates, in which candidates are not

expected to explain the complex economics behind Social Security financing predictions or know the exact population of Tehran, the Iranian capital, but to demonstrate that they have consulted with experts and formulated ideas and opinions about policies.

"We don't expect the next president to know the seventh digit of power or even be a scientist," says Krauss. "But they need to have some fluency with what the issues are, who to turn to for expertise, and most important, demonstrate a willingness to base public policy, where possible, on empirical evidence rather than ideological prejudice."

Chapman believes it is possible to organize a debate that reveals a candidate's attitude toward science without requiring him or her to dive into eye-glazing technical details. For example, he says, some of the questions would be: "Here is a family that will lose the land they've farmed for generations if the sea rises. Why is this happening, and what will you do about it? Here is a family that lost their child to mental illness and suicide. What can science do to alleviate this problem, and what would you do to help?"

It's simpler to organize any presidential debate before the conventions, after which the bipartisan Presidential Debate Commission takes charge of the three 90-minute, commercial-free presidential mega-matchups that draw as many as 70 million viewers.

In 2008, Science Debate organized two pre-convention debates in Philadelphia and Corvallis, Oregon, to be recorded and provided to PBS affiliates. Both parties ignored calls and emails from the debate organizers, opting instead to attend debates organized at religious venues instead.

Obama agreed to answer online science questions in writing, and other candidates followed suit. Their answers to "The 14 Top Science Questions Facing America" received 850 million media impressions, according to Chapman.

None of the campaigns queried by Newsweek responded to a question about whether they would participate in a science debate, but former GOP presidential candidate Newt Gingrich offered qualified support. "Republicans should participate in a science debate if they have some assurance that it will be about science rather than political science," he tells Newsweek. "If the purpose of the debate is to implement the anti-science views of the current editor of Science magazine--who has announced that the debate over climate change is over--no one should participate. That is anti-science propaganda on behalf of an ideology."

Gingrich was referring to Science Editor-in-Chief Marcia McNutt, incoming president of the National Academy of Sciences, and a vocal supporter of a presidential science debate. "We need to understand whether the candidates are using science to inform their opinions on issues, or whether they are selectively culling

scientific information to support their already formed opinions on issues. This is a big difference, and one which should be quite apparent in a debate format," she tells Newsweek.

If candidates debate science, McNutt says, the public could assess whether they trust mainstream science or industry-funded research that looks like science, but is actually just public relations.

Journalists Naomi Oreskes and Erik Conway, in their book Merchants of Doubt, describe how industries and vested individuals have spent billions to fund fake or skewed research that conflicts with mainstream science on certain subjects. The most famous example was the tobacco industry's effort to keep cigarettes from being linked to illness and death. "Doubt is our product," stated an executive of tobacco company Brown & Williamson in a famous 1969 memo, as the industry began to churn out hundreds of pages of lab-style propaganda aimed at countering the now widely accepted fact that cigarettes cause cancer.

Vested interests have funded parallel science to support many public policy positions, from the safety of secondhand smoke, the harmlessness of acid rain, the effectiveness of a "Star Wars" defense shield (Strategic Defense Initiative), the permeability of the ozone layer and DDT revisionism.

The effect of these campaigns on government policies is insidious, and during lean times, when the government has fewer dollars to invest in nonaligned technical advice, they are even more effective. In the early 1990s, House Speaker Gingrich touted himself as an apostle--if not an architect--of best-selling futurist author Alvin Toffler's high-tech "Third Wave" society, a post-industrial Utopia. But during his budget-slashing crusade, he defunded the House Office of Technology Assessment, an act former New Jersey Congressman Rush Holt, a Democrat and physicist and now CEO of the American Association for the Advancement of Science, compared to a "lobotomy" for Congress, because it left House members ever more reliant on political staff and industry lobbyists for scientific data relevant to policy.

The mother of all dubious science projects, though, is the one now aimed at the climate. It began just after the Clinton administration signed the (relatively toothless) Kyoto climate agreement. The American Petroleum Institute funded a Global Climate Science Communications Action Plan, with the stated chief goal of highlighting "uncertainties" in climate science.

Since then, hundreds of projects have been launched, conferences hosted, papers published and fishy expert analyses churned out by free-market, fossil-fuel supporters such as the Heartland Institute, all to mount a campaign against the 87 percent of scientists who believe global warming is caused by human activity.

The point of these well-funded missions is not to change the minds of scientists, but to influence voters. Mainstream scientists whose views are at odds with industry--for

example, NASA's Hansen, who first alerted Congress to global warming, or Penn State climate scientist Michael Mann, who created the "hockey stick" graph showing that the rise of human carbon emissions tracked almost exactly with a global temperature spike--find themselves in the middle of a game of hardball politics, fielding personal hate mail, lawsuits, death threats and curtailed careers. A Climate Science Legal Defense Fund was created in the last few years to aid climate scientists caught in the political crossfire.

The doubt sown by so-called parallel science affects how people view climate change, but arguably also diminishes science generally, so that educated progressives now suspect GMOs are harmful and vaccines must be bad for kids--dismissing mainstream scientific opinion. Ultimately, faux science PR campaigns embolden candidates to deny settled science and engage in ideological decision-making that has, as Republican adviser Karl Rove once put it (approvingly), moved beyond the "reality-based world."

Arrogance Kills

"Look, first of all, the climate is changing," Bush said this spring at a New Hampshire campaign house party. "I don't think the science is clear what percentage is man-made and what percentage is natural. And for the people to say the science is decided on, this is just really arrogant, to be honest with you. It's this intellectual arrogance that now you can't even have a conversation about it."

One reason for the impossibility of conversation is the intransigence of both sides, and Darwin's heir, Matthew Chapman, insists that the public should be able to hear from candidates who accept settled science and those who reject it. "It is not necessary that candidates agree with current scientific orthodoxy, or even with the scientific method," he says. "What you can't argue is that the issues are trivial and not worth debating." Chapman insists it's possible for a debate to occur between politicians who believe scientists and those who doubt them. "I am absolutely 100 percent sure this will happen," he says.

Dan Fagin, who won a Pulitzer Prize last year for his book Toms River: A Story of Science and Salvation, tracks the public discourse as a professor of science journalism at New York University. He begs to differ. "There will never be a science debate, at least not anytime soon, but that's not because of the issues are complicated. It's because the triumph of the hard right is that they convinced too many Republicans that science is just anoth er partisan issue, another opinion. The solution is going to have to come from within the GOP."

As the GOP shows no signs of grappling with that issue, the endless--nonpresidential--debate grows ever more bitter. Climate scientists say Bush is flat wrong, that the issue is settled: Man is mostly responsible. They scoff at Inhofe and Cruz, labeling them "deniers." They also admit they have a communications problem. Few have been taught to sell the public on their work, and they survive only by persuading

colleagues or government agencies to give them funding. Traditionally, scientists have had no incentive to talk about their work to inform, let alone inspire, the public. Now, when they do step up, many take the dismissive tone of an educated elite shepherding unschooled civilians who should trust the experts if they know what's good for them. The Pew survey found that education levels do not always correlate with trust in science, a fact scientists and their supporters might consider before assuming their adversaries are duped. "Science is not the sole source of wisdom, an oracle," Fagin says. "It's the most powerful tool we have for understanding the world, but individual scientists are only human and subject to error. A little more humility would do us all a lot of good."

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News Headline: Draft permit issued for Finger Lakes power plant |

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air-quality regulators confirmed that the ash was not toxic....

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Outlet Full Name: Advocate Online, The
News Text: WASHINGTON (AP) — A new study shows that air pollution is killing about 4,000 people in China a day, accounting for 1 in 6 premature deaths...

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News Headline: Draft permit issued for Finger Lakes power plant |

Outlet Full Name: Associated Press
News Text: DRESDEN, N.Y. (AP) - The state Department of Environmental Conservation has issued a draft permit to repower the 107-megawatt Greenidge power plant in the Finger Lakes, but it won't be able to burn coal.

The coal-fired plant in the town of Dresden on the western shore of Seneca Lake has been closed since March 2011. Its owners had sought to reopen it with a combination of natural gas, biomass and coal. But the DEC permit limits operation to natural gas, biomass and a minimal amount of waste oil to reduce air pollution.

Greenidge Generation has agreed to convert all generating operations to use natural gas as the primary fuel.

The permit also requires screening and other technology to reduce harm to fish at its cooling water intakes.

The draft permit can be viewed on the DEC website (http://on.ny.gov/1hAhuQw). Public comments will be taken until Sept. 11.

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Outlet Full Name: College Hill Independent - Online
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Outlet Full Name: Foster's Daily Democrat Online
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News Headline: Coal industry officials and critics converge on Gillette |

Outlet Full Name: Greenwich Time Online
News Text: ...future in the face of lower natural gas prices and tougher new federal emissions standards that target coal-fired power plants nationwide....

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News Headline: ENVIRONMENTALISTS RAMP UP PUSH FOR EPA TO TIGHTEN PENDING UTILITY ELG |

Outlet Full Name: Inside EPA
News Text: Environmentalists are using meetings with top EPA and White House officials to ramp up their push for EPA to use one of the two strictest options it proposed for its looming final power plant effluent limitation guideline (ELG) to curb wastewater discharges from the sector, and to include various other measures to tighten the regulation.

The final rule, which EPA must issue by a Sept. 30 judicial deadline, has been under White House Office of Management & Budget (OMB) mandatory pre-publication review since July 2. The policy will update the existing ELG standards which have not been revised since 1982. One environmentalist says the rule "will be a big improvement over the status quo, regardless of what option EPA is likely to pick" given the lack of prior updates.

"I think there will be a lot to like," says the source about the final rule, but nevertheless environmentalists are using their meetings with the administration to reiterate their calls for a sufficiently strict ELG.

For example, several major environmental groups, including Earthjustice and Sierra Club, met with EPA and OMB officials July 30 to ensure that the rule requires "best available technology (BAT)" to curb discharges. They say only two of the five control options EPA outlined in the proposed version of the rule would satisfy BAT.

In a separate meeting on the ELG, held Aug. 3 with Clean Water Action, the Association of Metropolitan Water Agencies and American Water Works Association, water industry officials stressed the importance of a final rule that addresses bromide discharges upstream of drinking water treatment plants. The concern is that bromides can interact with treatment processes at public drinking water intake systems to form disinfection byproducts, which are linked to some cancers, creating major compliance problems for the drinking water plants.

EPA says it uses technology-based ELG standards to reduce industrial discharges of pollutants into U.S. waters, and the requirements are incorporated into Clean Air Act national pollutant discharge elimination system discharge permits issued by the agency and states and through the national pretreatment program.

On its "Rulemaking Gateway" of pending regulations, EPA says the steam electric EGL affects power plants using nuclear or fossil fuels such as coal, oil and natural gas. The agency conducted a study in 2009 that found the 1982 ELG was inadequate to address discharges and needed to be updated to protect water quality. But EPA's delay in revising the rule spurred advocates to sue the agency and secure the Sept. 30 deadline for a final rule.

In their July 30 meeting with EPA and OMB, the groups Earthjustice, Sierra Club, Southern Environmental Law Center and Waterkeepers Alliance reiterated their jointly issued comments on the April 19, 2013 proposed rule which urged the agency to opt for one of the two strictest versions of the proposed ELG. "We reiterated that we want the strongest rule possible," a second environmentalist says of the recent meeting.

The two options are chemical precipitation followed by mechanical evaporation, and chemical precipitation followed by biological treatment. They say those options -- more stringent than the other three EPA floated -- are essential to put industry on a path to eventually meeting a zero liquid discharge target.

EPA outlined five options for curbing such discharges in the proposed ELG, but has indicated it is unlikely to adopt the most stringent of the controls, arguing that portions of that standard may be too costly and could violate the CWA requirement that such rules be "economically achievable."

But environmentalists have repeatedly urged the agency to adopt either of the two most stringent options and have threatened to sue EPA if it finalizes a weaker standard.

Most recently, they argued in a June 17 report that EPA underestimated the monetary value human health benefits associated with the rule in its earlier proposal, saying that environmental groups' estimate shows that a "comprehensive valuation" puts the total cost savings at more than the agency's estimated $14 million to $20 million per year.

During the July 30 meeting at OMB, the environmental groups reiterated their comments on the proposal that "includes so-called 'preferred' options that would do next to nothing to curb dangerous pollution" and would "leave other major waste streams unregulated--including large amounts of toxic bottom ash waste."

The first environmentalist says that the groups also stressed during the July 30 meeting that regardless of the option EPA adopts in the final rule, the agency can make the ELG more stringent in other respects, such as setting strict deadlines for compliance and addressing legacy wastewater.

Environmentalists took issue with the proposed rule's decision to exempt existing, "legacy" wastewater stored in impoundments but discharged after the rule goes into effect from the rule's requirements.

They argue that EPA must instead evaluate and determine BAT for each legacy wastewater stream because the CWA requires the agency to establish effluent limits that reduce or eliminate discharges of pollutants regardless of when those pollutants were first generated.

The groups also argue that the "plain language" of the CWA requires compliance with ELGs within three years of a final rule, and that the proposed rule's compliance deadline allows for "three years of delay" before any compliance is required and sets no hard deadline for compliance for standards implemented through state-issue permits, according to the 2013 comments.

"EPA must state in the final rule that compliance is required with the new BAT requirements 'as soon as possible, but no later than three years from the effective date of the final rule.'" the comments say.

In a separate Aug. 3 meeting with administration officials, representatives from the groups Clean Water Action, Association of Metropolitan Water Agencies and American Water Works Association stressed the importance of a final rule that addresses bromide discharges upstream of drinking water treatment plants.

The concern is that bromides can interact with treatment processes at public drinking

water intake systems to form disinfection byproducts, which are linked to some cancers, creating major compliance problems for the drinking water plants.

A third environmentalist says that while environmentalists' favored approach of mechanical evaporation would help address the issue, they are "not real optimistic" it will be addressed in the final rule.

The utility ELG will update the current limits for the sector to account for liquid discharges that have become more toxic in recent years, as plants are installing equipment, such as scrubbers, to meet new air regulations.

EPA's Rulemaking Gateway says the agency is slated to publish the final rule in the Federal Register sometime in September, which would allow it to meet the Sept. 30 judicial deadline.

OMB review typically takes 90 days -- but can take more or less time depending on the rule -- and the agency's decision to send the rule to the White House July 2 suggests it could meet that deadline.

EPA de facto water chief Ken Kopocis has also previously said the agency is on track to meet the Sept. 30 judicial deadline for issuing the final rule. -- Bridget DiCosmo

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News Headline: STATES BACK ENVIRONMENTALISTS' PUSH FOR STRICT DOMESTIC AIRCRAFT GHG LIMITS |

Outlet Full Name: Inside EPA
News Text: State air regulators are backing environmentalists' calls for EPA to pursue strict greenhouse gas (GHG) standards for aircraft, urging the agency to quickly pursue a strict domestic standard as a backstop alternative to its proposed plan to codify a pending international standard while also pushing officials to ensure the strictest global standard possible.

During an Aug. 11 public hearing hosted by EPA, officials representing air quality regulators from California, several Northeast states and a host of others said the agency should be prepared to initiate a rulemaking by February 2016 to set a unique domestic GHG standard under its section 231 Clean Air Act authority if the current negotiations before the International Civil Aviation Organization (ICAO) collapse.

"Aircraft represents the single largest transportation source not yet subject to GHG standards. ICAO and EPA must establish as rigorous and comprehensive a package as possible," said Nancy Kruger, deputy director of the National Association of Clean Air Agencies (NACAA), which represents the air agencies of 41 states. She

added that NACAA urges "that EPA be prepared to adopt a rigorous standard if the international standard falls short."

The hearing allowed for public comment on EPA's June 10 proposed endangerment finding for aircraft GHGs, a legal prerequisite for any regulation, and its advance notice of proposed rulemaking (ANPR), which sought input on several aspects of the ICAO process, as well as the possibility of EPA "adopting a more stringent aircraft engine emissions than ICAO." The written comment deadline for the proposals is Aug. 31.

Environmentalists have long sought to require the agency to promulgate domestic standards in the hopes that they could drive international talks. They eventually sued, winning a 2011 court ruling that said EPA was required to issue an endangerment finding and rulemaking.

In 2012, the court required the agency to respond to environmentalists, though the agency only issued the current proposals in June 2015.

Even though the agency issued a proposed endangerment finding, officials have continued to oppose environmentalists' push to set unique domestic standards, promising that any domestic regulation would instead follow an eventual ICAO standard.

"We would be acting in bad faith if we spent five years on this process and then failed to move forward," Chris Grundler, director of EPA's Office of Transportation and Air Quality, told reporters in June.

During the Aug. 11 hearing, airline industry officials continued to urge the agency to avoid a distinct domestic standard, saying the current ICAO process "aligns well with the Clean Air Act."

But California air regulator Erik White told the hearing that though it is a "promising step" that ICAO is anticipated to promulgate a standard, the organization's standards "have historically been technology-following and not technology-forwarding." Thus, the global standard set by the agreement "may not be sufficient" for California to attain its long-term GHG reduction goals, the California Air Resources Board (CARB) official said.

White says that mitigating aircraft-related emissions is a "critical part" of CARB's and other states' strategy but that states cannot regulate these emissions because they are preempted by federal law, making them "dependent on EPA to set a standard for aircraft."

"EPA has the responsibility to do what California and other states can't do themselves," White said, adding that "in the event that ICAO fails to adopt a standard by next February, we urge EPA to act independently of ICAO and adopt a stringent

standard."

While the state officials are generally backing environmentalists' calls for initiation of a domestic standard, advocates went even further, pressing EPA to bypass the ICAO negotiations altogether and initiate a proposed rulemaking by November, in time for the international climate talks in Paris the following month.

"EPA cannot wait for ICAO to take action," said Friends of the Earth climate campaigner Kate DeAngeles, noting that the international organization has only been successful in delaying action on a standard. In addition, any standard ICAO promulgates is "likely to be incredibly weak and insufficient, in part because [it] will not apply to in-use aircraft," she added.

The environmental groups emphasized EPA's explicit statutory requirement to develop a standard regulating aircraft GHG emissions once the endangerment finding is formally codified.

And they argue that the process to regulate the aircraft sector has been delayed too long. Environmentalists had first petitioned in 2007 to force the agency to regulate the emissions and eventually won the 2011 court ruling that forced EPA to issue an endangerment finding and rulemaking.

"The agency should make up for lost time," said Doug Wolf, a lawyer for the Center for Biological Diversity (CBD), which led the lawsuit. He added that "even the most stringent standard being considered by ICAO would not make a dent in emissions."

Instead, the agency should adopt its own standard, they say, one that regulates the entire aircraft, not just the engine, as well as in-use or existing aircraft, which ICAO has ruled out of its developing standard. The environmental groups -- Friends of the Earth, CBD, the Sierra Club and the Natural Resources Defense Council (NRDC) -- also urged EPA to work with the Federal Aviation Administration to create a low-carbon jet fuel standard, in order to prompt the development and use of biofuels.

The groups also noted that EPA's Clean Air Act authority does not place strict limitations on its regulatory power in the sector. "EPA is explicitly authorized to set emissions standards for all classes of aircraft," CBD's Wolf said, adding that this should stretch to include emissions from aircraft operations and air traffic control centers.

Environmental groups and state regulators also weighed in on a number of issues being debated in the ICAO negotiations, issues on which EPA sought comment in its ANPR. In the June 10 draft plan, EPA officials indicated that the ICAO talks had not resolved three key issues: whether the standard should extend to both new and in-production aircraft, when the new standards should effect and the standards' stringency.

Both environmentalists and state regulators say that, for any international standard to have a significant effect, it should cover both new type and in-production aircraft. Many of the environmentalist presenters cited research from the International Council on Clean Transportation (ICCT) that found a new type standard would only cover 5 percent of the global fleet in 2030, compared to a standard including in-production aircraft that would cover 55 percent by 2030.

As for timing, the groups pushed for a standard that takes effect as soon as possible, meaning 2020 for new type aircraft and 2023 at the latest for in-production.

State regulators from NACAA and the Northeast States for Coordinated Air Use Management also encouraged EPA to examine the possibility of mitigating nitrogen oxide emissions, either within a GHG emissions standard or as a separate action.

Industry representatives at the hearing, however, were quick to note the steady progress the aircraft sector has made in reducing emissions thus far. Though U.S. commercial aircraft comprise 5 percent of the country's economic activity, they only account for 2 percent of its GHG inventory, explained Nancy Young, vice president of environmental affairs at Airlines for America.

Young reiterated industry's commitment to reducing GHG emissions and noted the importance that a standard is set internationally as opposed to domestically because the aircraft industry is global. "The ICAO process is rigorous and ICAO criteria for adopting those standards aligns well with the Clean Air Act," she said.

Joe DePete, first vice president of the Air Line Pilots Association, warned of the "detrimental effect" that could occur if EPA were to go beyond the standard established by ICAO in February of next year.

"The creation of a U.S. specific standard would put our airlines at stake without a benefit to the environment," DePete said, adding that the standard should only apply to new type aircraft so as to not "cause undue harm on the industry." -- Abby Smith

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News Headline: OKLAHOMA CITES EPA'S MERCURY RULE PLAN TO REITERATE ESPS CHALLENGE |

Outlet Full Name: Inside EPA
News Text: Oklahoma's attorneys are reiterating their pending federal claim that the Clean Air Act plainly blocks EPA's greenhouse gas (GHG) rule for existing power plants because the agency is already regulating the plants' air toxics emissions, citing a new plan by the agency to fix legal flaws to its mercury rule without vacating the regulation.

Oklahoma and other EPA critics argue that the mercury rule, issued under air act section 112, prohibits EPA from regulating plants' GHGs under section 111(d) because the air act prohibits such "double regulation."

The Sooner State is pressing this case in pending litigation, Scott Pruitt, et al v. Gina McCarthy, et al., before the U.S. Court of Appeals for the 10th Circuit that is seeking to block EPA from finalizing its GHG existing source performance standards (ESPS), issued under section 111 (d), even though the agency issued the final rule Aug. 3.

In an effort to advance its pending litigation, the state's lawyers are citing EPA's Aug. 10 filing in litigation over the mercury rule, where the agency asked the D.C. Circuit -- in response to an adverse Supreme Court ruling in Michigan v. EPA -- to remand the regulation "without vacatur" while it overhauled measure.

"This filing undermines any possible argument by EPA that Michigan authorizes it to proceed with" the GHG rule, Baker Hostetler attorney David Rivkin writes in an Aug. 11 notice of supplemental authority to the 10th Circuit. The notice is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183880)

"The agency is, in effect, trying to have it both ways, maintaining its Section 112 standards while also rushing to finalize Section 111(d) standards for the same sources -- the very thing that it is precluded from doing on the face of the Clean Air Act," Rivkin adds.

The notice reiterates the state's novel request for an injunction of the rule pending its appeal to the 10th Circuit, though EPA has earlier has called the effort a "Hail Mary Pass" that is unlikely to succeed.

While Oklahoma's suit faces procedural hurdles, the legal issue at its heart is complicated because House and Senate amendments to section 111(d) -- that may prohibit the "double regulation" as EPA critics argue -- were never reconciled in conference before the 1990 air act amendments were enacted. The Senate amendment would explicitly allow EPA's proposed rule by limiting section 111(d)'s "112 exclusion" to pollutants already regulated under that section. The House amendment could be read as prohibiting the rule because it focuses on source categories, not pollutants.

EPA has not argued that Michigan -- which found that EPA unreasonably failed to consider costs when making an initial finding that it was "appropriate and necessary" to regulate power plants' toxics -- would allow the ESPS to proceed.

Instead, the agency has called the ruling "narrow" and that making a connection between the ruling and the ESPS "is comparing apples to oranges."

In the final ESPS, it offers a new interpretation of section 111(d), finding that even

the House language would permit the rule because it is ambiguous and that the interpretation offered by critics is at odds with the overall context of the air law.

In the mercury rule suit, which is now being considered in the D.C. Circuit, EPA in an Aug. 10 brief said it will meet a self-imposed April 15 deadline for crafting a new threshold finding, including the high court-mandated cost consideration, while objecting to a power company's request for the court to issue an emergency stay of the rule.

The agency said it "intends to seek remand without vacatur to address the Supreme Court's limited holding in" Michigan. That plan would leave the mercury rule in place while EPA issues the new "appropriate and necessary" finding. -- Lee Logan

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News Headline: EPA OUTLINES PLAN FOR UTILITY MACT REMAND IN OPPOSITION TO STAY REQUEST |

Outlet Full Name: Inside EPA
News Text: EPA says it plans to meet a self-imposed spring deadline for crafting a new assessment of the costs associated with its finding that a utility air toxics rule is "appropriate and necessary," detailing the schedule in a legal filing that objects to a power company's request for an appellate court to issue an emergency stay of the rule.

A group of "clean" utilities that generate power from natural gas and other energy sources that emit less pollution than coal combustion are also opposing the bid for a stay of the utility maximum achievable control technology (MACT) regulation while the U.S. Court of Appeals for the District of Columbia Circuit weighs how to proceed with the rule. The utilities say the stay request is a "Trojan Horse" that aims to derail implementation of the rule for "hundreds" of facilities.

The D.C. Circuit originally upheld EPA's finding that a utility MACT was appropriate and necessary, rejecting claims by industry and some states that the agency should have considered costs as part of the finding. EPA said the Clean Air Act is silent on this issue, and that it weighed costs when it set the rule's emissions limits.

But the Supreme Court on appeal in a 5-4 ruling issued June 29 faulted the lack of cost consideration, saying it should have been a factor in the original determination. The high court sent litigation over the rule back to the D.C. Circuit in the case White Stallion Energy Center v. EPA, where it is currently still pending.

In a July 31 motion, Western electric utility Tri-State Generation and Transmission Organization asked the appellate court for an emergency stay to suspend the rule's

April 15 hydrogen chloride (HCl) emissions limit compliance deadline for the its Nucla, CO, power plant, pending EPA's re-issuance of the appropriate and necessary finding.

The Department of Justice (DOJ) in an Aug. 10 legal brief on EPA's behalf opposes the request as unwarranted, and reveals the agency's plan to retain the rule and rework the finding by next spring.

"When this court orders motions to govern remand proceedings, EPA intends to seek remand without vacatur to address the Supreme Court's limited holding in Michigan v. EPA," as the case was known at the high court, the brief says. "In support of that motion, EPA intends to submit a declaration establishing the Agency's plan to complete the required consideration of costs for the 'appropriate and necessary' finding by spring of next year. In fact, EPA's aim is to develop a schedule that will allow it to do so before the Nucla Station's April 15, 2016 compliance deadline," DOJ says. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183860)

DOJ says EPA has not decided on the exact form of its response to the Supreme Court's ruling. But DOJ says the existing administrative record for the rule "contains extensive documentation regarding the cost of compliance," and that the "existence of those documents indicates that the Agency can meet an ambitious schedule on remand."

If EPA re-issues the appropriate and necessary finding by spring, it could be before the April 15 compliance deadline that the Nucla plant is currently facing after winning a one-year compliance extension.

On the substance of Tri-State's motion, DOJ says that the company has failed to exhaust its administrative options to win more compliance time for the Nucla plant. The company's claim stems from the fact that the plant is small, operates infrequently and would be uneconomic to retrofit with additional pollution controls.

Tri-State says it is faced with "imminent harm," and hence a stay or "tolling" of implementation is necessary, because the company must under an agreement with Colorado regulators decide by Sept. 1 whether to keep the plant operational or close it. Without knowing the outcome of the ongoing D.C. Circuit case -- which might result in vacatur of the rule -- the company cannot reasonably make this decision, Tri-State argues.

However, DOJ in the new filing says that the Sept 1 deadline "is of Tri-State's own making, having proposed it to Colorado in its June 5, 2014, extension request." Also, the company has not formally approached EPA about winning further flexibilities available under the MACT rule, DOJ says.

Tri-State has already conceded that adding controls at Nucla is not economic, and

therefore the company is simply seeking to delay the inevitable closure it says is the only option, DOJ says. Further, "granting Tri-State's request would injure EPA and other parties by eroding some of the protections of the Rule without giving EPA an opportunity to fully brief the issue of whether remand without vacatur is warranted," DOJ argues.

DOJ also argues that Tri-State is ignoring the harmful effects of HCl, which is not only harmful to health itself, but in the rule serves as a "surrogate" for other, even more harmful acid gases.

Meanwhile, low-emitting "clean" utilities backing EPA in its fight to retain the rule submitted their own Aug. 10 brief to the D.C. Circuit opposing the stay request. The utilities say that Tri-State's push for an emergency suspension of the Nucla plant's implementation deadline is not limited to one plant with special circumstances. Rather, it could open the floodgates to many other plants making similar claims, the utilities warn.

Utilities Calpine Corporation, Exelon Corporation, National Grid Generation LLC, and Public Service Enterprise Group, Inc. say that there is nothing unique about the Nucla plant's situation.

"Tri-State's motion is a poorly disguised Trojan Horse, masquerading as a motion about 'one compliance obligation for one power plant' but advancing a theory of relief that could logically apply to all compliance obligations at hundreds of power plants," they argue.

They add that "were the Court to grant Tri-State's motion it would short circuit the Court's thorough consideration of its principal tasks on remand: determining the action EPA must take in light of the Supreme Court's decision and the disposition of [the MACT] while EPA fulfills its obligation."

Tri-State has failed to make the factual case to justify "emergency" intervention by the court, these utilities argue, pointing out that the company could ask Colorado for an extension of the Sept. 1 deadline.

Also, the company does not face the financial hardship it claims absent a delay of MACT compliance at Nucla, the utilities say. "Nothing in the motion supports the conclusion that the closure of Nucla Station, or even a large expenditure at Nucla Station, would 'threaten[] the very existence' of Tri-State's business," they argue, citing the D.C. Circuit's precedent on how much harm might warrant such extraordinary measures. -- Stuart Parker

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News Headline: EPA FLOATS PLAN TO PRECLUDE SOME ADVERSE AIR

RULINGS FROM NATIONAL EFFECT |

Outlet Full Name: Inside EPA
News Text: EPA is proposing to revise its years-old "regional consistency" policy mandating uniform application of Clean Air Act requirements across all its regions in order to preclude adverse appellate court rulings that address local or regionally applicable regulations from having to apply nationally, according to a new proposed rule.

"If the proposed revisions to the Regional Consistency regulations are finalized, it will be clear that an adverse federal court decision in a case regarding locally or regionally applicable actions does not apply nationwide," says the agency's proposal, which at press time EPA had not yet published in the Federal Register. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183782)

The rule, which EPA quietly posted on its website Aug. 5, responds directly to a U.S. Court of Appeals for the District of Columbia Circuit decision in May 2014 in National Environmental Development Association's Clean Air Project (NEDA/CAP) v. EPA, which vacated an EPA memo that sought to narrow the reach of an adverse 6th Circuit air permitting ruling to only the states in that circuit.

The D.C. Circuit said the memo was at odds with the regional consistency policy as it would have led to differing permit requirements among all 50 states.

In response, EPA announced plans for a rulemaking to "revise the Regional Consistency regulations to allow an exception for judicial decisions," an action that drew early criticism from industry lawyers and environmentalists, who charged it will result in inconsistent requirements.

"This is EPA's way of working around the courts," one industry source said, adding that the planned exemption would pit "states against states by setting varying regulations depending on where the source is located."

One environmentalist called the planned rulemaking a "travesty of administration" that could result in some states having less-stringent air pollution controls if a court in that region pares back or scraps an EPA rule.

The air act already mandates that rules with "nationwide scope or effect," such as the agency's just-issued greenhouse gas (GHG) rules for power plants, are automatically heard by the D. C. Circuit.

But under the proposed rule, EPA would not apply rulings by other courts on locally or regionally applicable regulations -- such as EPA regional offices' approvals of state implementation plans (SIPs) for complying with the GHG rules or other air standards, or Clean Air Act permitting decisions -- to states in other appellate

circuits, even though this may result in inconsistent policy application.

This may result in a patchwork approach. For example, an appellate ruling on the stringency of an air permit would apply only to those states that fall within the applicable circuit, potentially resulting in inconsistent application within and across regions as EPA regions and appellate circuits do not overlap.

EPA acknowledges the potential for such an outcome, noting that "through this rulemaking, the agency would be authorizing a region to act inconsistently with nationwide policy or interpretation to the extent that the region must do so in order to act consistently with a decision issued by a federal court that has direct jurisdiction over the region's action."

Under the proposal EPA would make three revisions to its existing regional consistency rules. First, it would add a provision "to acknowledge an exception to the 'policy' of uniformity to provide that a decision of a federal court that arises from a challenge to 'locally or regionally applicable' actions would not apply uniformly nationwide, and that only decisions of the U.S. Supreme Court and decisions of the D.C. Circuit Court that arise from challenges to 'nationally applicable regulations . . . or final action' would apply uniformly nationwide."

Second, the rulemaking would add a provision to the consistency rules to clarify that EPA headquarters would not need to issue new "mechanisms," which could potentially include guidance, to address federal court decisions from challenges to locally or regionally applicable actions, as they would not be deemed to affect states in other circuits.

Third, EPA will "clarify that EPA regional offices' employees would not need to seek headquarters office concurrence to act inconsistently with national policy or interpretation if such action is required by a federal court decision arising from challenges to 'locally or regionally applicable' actions."

In a fact sheet on the proposal EPA says, "These changes will give the EPA the flexibility to implement [Clean Air Act (CAA)] programs on a national scale while also minimizing delay in implementing court rulings concerning certain EPA actions under the CAA."

The proposal is the result of lengthy litigation over a Clean Air Act policy on "aggregating," or combining, emissions for permitting purposes. Aggregation is a major issue for industry, especially the natural gas sector, because if combined emissions from several sources exceed a certain threshold, they could be subject to stricter permit controls.

The 6th Circuit in Summit Petroleum Corp. v. EPA scrapped the agency's "functional interrelatedness" test for determining "adjacency" -- a central factor for when regulators aggregate emissions sources for the purposes of triggering more stringent

Title V and other permit requirements under the air law. The court said that adjacency must be determined based solely on physical proximity, which is less likely to trigger aggregation.

Following the ruling, EPA issued a December 2012 memo that sought to limit the ruling to those states covered by the 6th Circuit: Michigan, Ohio, Tennessee and Kentucky, which cover parts of EPA Regions 4 and 5. The memo said that in all other EPA regions and states the stricter adjacency test would remain in place.

NEDA/CAP, an industry group whose members include Alcoa, BP America, Boeing, Koch Industries and others, then sued, arguing it unlawfully created competing permitting regimes and gave the 6th Circuit states a competitive advantage with the weaker aggregation test. NEDA/CAP said in filings that the memo violated EPA's regional consistency regulations, and the court in its May 2014 ruling agreed with those claims.

"The D.C. Circuit Court presented three options that the EPA could pursue in response to an adverse decision: revise the underlying regulation; appeal the decision; or revise the Regional Consistency regulations. By making the revisions proposed in this rulemaking, the EPA is following one of the options suggested by the court," the agency says in the proposal, offering its justifications for why it chose the consistency rule revision option.

EPA says that the court's suggestion of revising the underlying aggregation regulations at issue in the 6th Circuit case is too narrow an approach to guard against future confusion in other air rule suits. EPA is crafting a revised rule on defining adjacency, but says that method would not be a workable fix for future cases.

"While this approach may resolve the narrow issue that is the subject of the Sixth Circuit decision, and the EPA is in fact in the process of revising the permitting regulations that were the subject of the Sixth Circuit Court decision and the December 2012 memorandum, this approach generally would require a new rulemaking following each adverse court decision regarding an issue of local applicability," the agency says in the proposal.

"Each national rulemaking of this nature would likely take more than a year -- and possibly several years -- to complete. By revising the EPA's Regional Consistency regulations to fully allow for intercircuit nonaquiescence, the agency can through one rulemaking save the considerable time and resources potentially required by several narrow rulemakings," says the agency. Intercircuit nonaquiescence is a practice in which a circuit court decision is binding only in areas subject to the court's jurisdiction. EPA says that is historically used this practice "with regard to decisions issued by both circuit and district courts and arising in local, non-nationwide actions."

EPA says it also chose not to follow the D.C. Circuit's suggestion of appealing the

NEDA/CAP suit to the Supreme Court as only about one percent of petitions for certiorari for the justices to hear a case succeed. Absent high court review, the 6th Circuit decision in Summit could have forced a new national policy change for EPA.

As a result, the agency opted for the D.C. Circuit's third suggestion of revising its regional consistency rules "to account for regional variances created by judicial decisions or circuit splits." EPA says its rulemaking "follows this option because we believe it most effectively addresses the issue presented by an adverse federal court decision addressing an action of local or regional applicability."

The agency adds that, "[T]his proposed revision also would accommodate the EPA's proper and longstanding application of the doctrine of intercircuit nonaquiescence in future cases while eliminating the need for several lengthy, narrow rulemakings or review of a lower court's decision by the U.S. Supreme Court."

EPA argues that the rulemaking is consistent with the longstanding situation of circuit courts issuing sometimes contradictory rulings on issues that eventually require the high court to resolve. "By revising the regulations in part 56 to fully accommodate intercircuit nonaquiescence, the EPA is acting consistently with the purpose of the federal judicial system by allowing the robust percolation of case law through the circuit courts until such time as U.S. Supreme Court review is appropriate," EPA says.

"The vast majority of cases that the U.S. Supreme Court hears arise from circuit splits. Thus, revising the Regional Consistency regulations to accommodate intercircuit nonaquiescence advances the federal judiciary's ability to experiment with different approaches to similar legal problems, and the development of a circuit split that could eventually lead to U.S. Supreme Court review of important issues under the CAA," the agency adds.

EPA cites the Summit decision as an example of how the proposed changes could have avoided the need for the headquarters aggregation memo that was eventually vacated. "If the proposed revisions to the Regional Consistency regulations had already been in place, this type of memorandum from EPA headquarters would not have been necessary because regions, states, and other potentially affected entities would have had certainty and predictability regarding the application of such a judicial decision -- they would have known that this type of permit-specific, local and regional decision would only apply in the areas under the jurisdiction of the Sixth Circuit," EPA says.

"Accordingly, with the changes proposed, it would have been clear to everyone that EPA regions would not be bound to apply the findings of the Summit decision in states outside the Sixth Circuit, and could continue to apply the longstanding practice that had not been successfully challenged in other federal circuit courts in their regions or decided," the agency adds.

EPA will take comment on the proposal for 60 days following its publication in the Register, and then use those comments to inform a future final version of the rule. -- Anthony Lacey

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News Headline: SEVERAL STATES FILE LEGAL CHALLENGE TO EPA'S SSM EMISSIONS 'SIP CALL' |

Outlet Full Name: Inside EPA
News Text: A coalition of 17 states has filed a lawsuit challenging EPA's rule forcing 36 states to scrap language in their air quality plans that exempts some industrial emissions during facility startup, shutdown and malfunction (SSM) from having to meet Clean Air Act limits, with the states arguing the rule exceeds EPA's authority.

The states' suit filed Aug. 11 in the U.S. Court of Appeals for the District of Columbia Circuit is just one of many legal challenges to the rule, including other D.C. Circuit suits filed by utility Luminant, the SSM Litigation Group of trade and business organizations, and various other power sector groups. Suits have also been filed in the 5th Circuit, creating confusion about which of the two appellate courts might hear the case. The states' suit is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183934)

EPA's rule says that 36 states' implementation plans (SIPs) include provisions allowing air law exceedances during SSM periods that are no longer lawful as a result of D.C. Circuit rulings that invalidated both the SSM exemption and a subsequent "affirmative defense" provision that the agency offered after the SSM ruling.

Industry says there are SSM periods when there are unavoidable and uncontrollable pollution spikes, and that EPA's rule -- known as a "SIP Call" -- fails to recognize the impossibility of controlling these emissions.

The coalition of states that have filed suit over the SIP Call in the D.C. Circuit includes Kentucky, North Carolina, Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Kansas, Louisiana, Mississippi, Missouri, Ohio, Oklahoma, South Carolina, South Dakota and West Virginia.

In an Aug. 11 statement, Arkansas Attorney General Leslie Rutledge said that the challenging states consider their agency-approved SIPs to still be legally valid despite EPA's SIP Call. "The EPA is completely ignoring the scope of its authority under the Clean Air Act in order to force another overreaching rule on Arkansans," she said.

The statement adds that, "For decades, States have ensured compliance with the standards set for startup, shutdown or malfunction through their individual SIPs."

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News Headline: EPA, SAB NEAR AGREEMENT ON ALTERNATIVE BIOMASS CARBON FRAMEWORK |

Outlet Full Name: Inside EPA
News Text: An EPA Science Advisory Board (SAB) panel is close to finalizing its advice to EPA for how to estimate biomass carbon emissions using an alternative framework, a document that could eventually help officials develop a policy for how to address biomass as a compliance option under its greenhouse gas (GHG) rule for existing power plants.

While agency officials are publicly endorsing the panel's alternative framework, they still have a lengthy road ahead before they can use the framework to determine how or whether states and power plants can use biomass as a means of demonstrating compliance with the GHG rule because the framework is policy neutral and only provides methods for calculating biomass carbon impacts.

And industry groups are expressing disappointment with the alternative framework.

The panel during an Aug. 6 call agreed to finalize its alternative framework -- which assesses the impacts of a biomass policy on forest carbon stocks rather than smokestack emissions as EPA had proposed.

Panelists discussed details of the alternative network during the Aug. 6 call, as well as ways to address some outstanding concerns in response to the charge questions. And they also continued to express their disapproval with EPA over its policy-neutral approach in the executive summary, but appeared to move closer to final agreement. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183806)

Panelists indicated they could wrap up their work on their next scheduled call, slated for Sept. 9. And Holly Stallworth, the designated federal official for the panel, said she intended to post nearly final documents by Aug. 21 and hoped that the Sept. 9 call could be the last.

Once the panel completes its work, it will end a contentious, years-long process on how EPA should estimate carbon dioxide (CO2) emissions from biomass.

EPA's 2011 biomass accounting framework (BAF), the agency's first, drew strong criticism from an earlier SAB panel in part over the agency's default decision to assume that biomass is carbon neutral. Many industry groups favor that approach,

arguing that the fuel is carbon neutral because forest regrowth sequesters carbon emissions.

But environmentalists have strongly resisted this, saying that biomass combustion, especially of whole trees, can result in significant and immediate releases that take years to be resequestered.

EPA's second proposal, released late last year, laid out a series of formulae to determine whether CO2 emissions from biomass combustion are carbon neutral, must be fully counted, reduce emissions or are somewhere in between. But even that drew criticism from the panel in part over the agency's decision to craft a policy-neutral framework, as well as some of its overall approaches.

The agency has also drawn criticism from environmentalists over its policy decision, released at the same time that it unveiled its second proposal, to allow "sustainable" biomass to be used as a compliance tool under its existing source performance standards (ESPS), though the agency did not define what it meant by that term.

SAB panelists disagreed as to whether sustainable biomass is related to GHGs.

While the final rule, released Aug. 3, generally endorsed that approach, the agency deferred specific decisions on what types of biomass are carbon neutral and eligible to be used to comply with its rule and instead sought comment on climate-friendly biomass in its proposed federal implementation plan (FIP) issued alongside the ESPS.

To help address the SAB panel's concerns, two of the panelists, Mark Harmon of Oregon State University and Ken Sog of the U.S. Forest Service, developed an alternative BAF which they touted as a much simple approach than EPA's, while better capturing the cumulative impacts and accounting for any leakage.

EPA officials have said they are receptive to the alternative, with an agency official telling Inside EPA last month that the approach provided a "path forward" on a complex and controversial issue. The official also sought to downplay the differences between the agency's original draft framework and the alternative, saying the new approach in some ways offers "direct answers" posed by the agency's charge questions to SAB and "we very much welcome those answers."

On the Aug. 6 call, EPA continued to signal its support for the alternative framework, submitting a document that said it "represents four potential improvements over the 2014 framework," including explicit methodology for calculating the time frame; a different approach to calculating the biomass accounting factor; an explicit use of carbon pools; and the elimination of leakage concerns.

EPA economist Allen Fawcett told the panel that it is "reassuring" that the panel and

the agency are seeking to answer the same question in the two frameworks. He also continued to stress the policy-neutrality of the framework, and said regulatory approaches need to be considered separately.

But industry groups appear as disappointed with the alternative framework as they did with the original. Industry has long urged EPA to adopt a simple framework that allows biomass to be considered carbon neutral if forest stocks are stable or growing.

Paul Noe of the American Forest & Paper Association (AFPA) warned on the Aug. 6 call that the alternative framework appears ambiguous on whether it would consider forest product manufacturing residuals to be considered carbon neutral when used for energy, and asked SAB to recognize it as such.

AFPA's comments say the new approach, "which focuses on pools of forest carbon, does not adequately address forest products manufacturing residuals, which constitute the primary source of energy used by the paper and wood products industry, which is the largest industrial producer and user of bioenergy in the United States. If forest products manufacturing residuals were not used for energy, many would be disposed of in industrial landfills and subsequently emit methane, a greenhouse gas that is 25 times more potent than CO2."

The comments also express concern that the new approach depends on "modeling assumptions and predictions that create significant uncertainty" and reiterates the need to consider "the tradeoffs between simplicity, scientific rigor and policy effectiveness," citing SAB's draft executive summary.

Dave Tenny of the National Alliance of Forest Owners (NAFO) echoed similar concerns, warning in his comments that the board should fully vet "novel concepts that have not yet appeared in the science literature." NAFO also noted that science can support a variety of policy options, and that there is no one right answer.

Tenny pointed to EPA's ESPS, which may allow states to determine how to use biomass into their compliance plans. "There is no single approach that is uniquely correct. . . . We urge the SAB to acknowledge that fact in its findings," he said. -- Dawn Reeves

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News Headline: D.C. CIRCUIT'S CSAPR RULING CASTS DOUBT OVER FUTURE INTERSTATE AIR TRADING |

Outlet Full Name: Inside EPA
News Text: The U.S. Court of Appeals for the District of Columbia Circuit's ruling remanding Cross-State Air Pollution Rule (CSAPR) "budgets" to EPA for reconsideration casts major doubt over the viability of any future agency interstate

emissions trading program because of strict limits the court appears to place on such programs, sources say.

But an EPA spokeswoman counters that "[t]his is not EPA's reading" of the D.C. Circuit's July 28 decision in EME Homer City Generation L.P. v. EPA, which remanded the budgets but left the rest of the landmark sulfur dioxide (SO2) and nitrogen oxides (NOx) emissions trading program intact. The spokeswoman says EPA will address the decision in a pending rulemaking designed to help further cut transported emissions beyond CSAPR's mandates.

The D.C. Circuit's ruling for now ends long-running litigation of CSAPR -- although some related lawsuits continue -- following an initial 2-1 decision issued in 2012 that rejected all challenges to the trading program. Critics of the rule then appealed it to the Supreme Court, which issued a 6-2 ruling in April 2014 that upheld the overall structure of the trading regime (Inside EPA, July 31).

However, the high court did not address a host of technical and other challenges to the rule -- including fights over the budgets, which are emissions limits established for states under CSAPR. The justices remanded the litigation over the rule to the D.C. Circuit, which issued a July 28 unanimous ruling that left the structure of the rule largely intact, but vacated and remanded to EPA the budgets for 13 states after finding flaws in EPA's approach.

In last month's EME Homer City ruling, the unanimous three-judge panel expressed concern that EPA's vacated budgets led to "over-control" -- forcing upwind states to cut emissions more than is required for downwind states to meet regulatory air standards. The court's concerns about over-control will have serious ramifications going forward for EPA's cost-effectiveness thresholds that are key to interstate trading efforts, sources say.

The appellate court appears to imply that state-specific thresholds for cost-effectiveness are needed -- which would effectively eliminate interstate trading as a policy option, some legal observers say.

Judge Brett Kavanaugh, writing the unanimous opinion in the new EME Homer City decision, focused on the need to avoid over-control of emissions from upwind states in CSAPR.

CSAPR seeks to help states attain the 1997 ozone national ambient air quality standards (NAAQS), expressed as 85 parts per billion (ppb), and also the 2006 fine particulate matter (PM2.5) NAAQS, set at 15 micrograms per cubic meter (ug/m3) by curbing ozone-forming NOx and SO2 that leads to PM2.5 formation.

The Supreme Court in its ruling on CSAPR said on the subject that over-control of emissions from an upwind state to a particular downwind location to which it is "linked" is permissible only in certain circumstances. Linked states are those

contributing pollution amounting to at least 1 percent of the national ambient air quality standard (NAAQS) for either ozone or PM2.5 in areas failing to attain these standards.

Such over-control may be tolerated if there are other downwind areas also linked to the upwind state that are in NAAQS "nonattainment," or which see their "maintenance" of NAAQS attainment threatened by the upwind emissions. The high court left open the possibility of "as-applied" challenges by states if they feel they are being over-controlled and are not contributing to the NAAQS attainment problems of any downwind area.

Kavanaugh in his latest ruling says that "[i]n evaluating petitioners' as-applied challenges" to the CSAPR emissions budgets "we thus must determine whether a downwind location would still attain its NAAQS if linked upwind States were subject to less stringent emissions limits" as a result of the high court's decision.

He further judges stringency of controls in terms of EPA's cost-effectiveness thresholds, which are measured in dollars per ton of pollution prevented. The agency in CSAPR established four such thresholds: $500/ton for all states in the annual NOx trading pool; $500/ton for the states in the ozone-season (summertime) trading pool; $2,300/ton for SO2 for states in trading Group One, and $500/ton for SO2 trading Group Two.

Kavanaugh holds that if an upwind state can reduce its emissions at a lower cost than that assumed by EPA -- for example, $100/ton, rather than $500/ton -- and still meet its obligations to help the downwind areas to which it is linked meet the NAAQS, then this is evidence of unlawful over-control.

EPA in CSAPR employed such uniform cost-effectiveness thresholds to provide the basis for interstate trading. States are permitted to trade with each other if they have the same cost-effectiveness threshold -- so Group One SO2 states may not trade with states in Group Two.

The agency in the suit argued that uniformity is essential to the effective functioning of a market, because states required to install more expensive controls cannot trade on an equal basis with those only required to impose much cheaper controls. Sources note that utilities operating in multiple states will generate power wherever it is cheapest for them to do so, and electricity markets will buy power generated at the cheapest price, creating the danger of "leakage," or migration of generation to the lower-cost -- and frequently upwind -- states.

Kavanaugh in his ruling cites EPA's argument from briefing in the case: "EPA says that uniform cost thresholds are important because they subject 'to stricter regulation those States that have done relatively less in the past to control their pollution' and prevent those States from 'free riding on their neighbors' efforts to reduce pollution.'"

But Kavanaugh dismisses such concerns, writing that the Supreme Court's opinion "explicitly authorized as-applied challenges that, when successful under the principles outlined by the Court, will necessarily mean a lack of uniformity in certain circumstances. . . . EPA's uniform cost thresholds have required States to reduce pollutants beyond the point necessary to achieve downwind attainment. That violates the Supreme Court's clear mandate in EME Homer."

Using the existing "linkage" test, some 26 states would appear to be linked to downwind nonattainment or "maintenance" areas for the purposes of the next transport rule, according to an Aug. 4 notice of data availability (NODA) containing the latest EPA air quality modeling to support a new rule. EPA in the NODA stresses, however, that it will not decide on policy issues such as cost-effectiveness thresholds under it proposes another transport rule

Sources say that this conception of how to measure over-control is problematic. One environmental legal source says it "will have crippling impacts" on EPA's ability to use trading programs to address the issue of interstate pollution if Kavanaugh's view prevails in the entire circuit, suggesting that a motion for en banc review from EPA or other supporters of CSAPR among environmental groups is a possibility.

If Kavanaugh's ruling stands, the power industry "will have shot itself in the foot" in its opposition to CSAPR, because by eliminating interstate trading as an option, the courts leave EPA more inclined to impose stricter command-and-control type regulation of individual power plants, says the environmentalist.

An industry legal source agrees that EPA could struggle to use interstate trading again in the pollutant transport context as a result of the new ruling. That could hinder the agency's ability to use trading, which allows companies to either install pollution controls and earn emissions reduction compliance credits, or buy credits to comply.

But the source argues that "it wasn't so much the D.C. Circuit's opinion as the Supreme Court's opinion that sounded the death knell," suggesting Kavanaugh's interpretation of the high court's opinion is correct.

"In the future, you are pretty much going to see intrastate programs," says the source. Intrastate emissions trading programs are much more limited in scope as they only allow trading of emissions between facilities within one state, whereas interstate programs allow trading across several states. CSAPR includes both types of trading.

The industry source notes that interstate trading was already limited in CSAPR, due to a previous D.C. Circuit ruling that remanded the Clean Air Interstate Rule (CAIR), CSAPR's predecessor program. The court in that 2008 decision found that CAIR had failed to tie upwind emissions to downwind air quality problems, among other failings.

The source says that because of the potential significant restrictions on future interstate trading, the overall cost-effectiveness of CSAPR and successor rules will fall, even as the costs to utilities in certain states also fall. CSAPR will not be able to cut pollution as much to help states attain the agency's ozone and PM2.5 NAAQS, the source says, and certain states like Texas will see their emissions budgets rise in the future.

The real importance of the court's remand, sources agree, is for future transport rules, because much of the country is already attaining the 1997 ozone NAAQS, and indeed many areas will meet the tougher 2008 standard without the need for new regulation. If EPA as expected adopts a NAAQS of 70 ppb or lower, many areas will be thrown into nonattainment, however, making interstate transport a highly-charged issue once more.

But a second environmental attorney disagrees that the EME Homer City ruling limits trading, and argues that EPA could "fine tune" its approach, perhaps by using more groups of states with different cost-effectiveness thresholds. The agency could "differentiate a bit more between differently situated states," the source says.

One Northeastern air pollution expert adds that the new ruling does little or nothing to curb interstate trading, because the court already found unfettered trading illegal under CAIR.

The "latest D.C. Circuit decision may result in increases in some state emission budgets, but the constraints on interstate trading already existed from the CAIR holding. To the extent leakage may occur, it would occur no matter the program, if from a covered state to an uncovered state," according to the source.

The source notes that EPA in its recent NODA released new air quality modeling data to support its forthcoming interstate transport rule, expected in the fall. In the document, EPA outlines its projections of which states will struggle to meet the 2008 ozone NAAQS in 2017, and what the contribution of upwind states to downwind states' NAAQS attainment problems will be in future rulemakings.

The first environmentalist, however, says Kavanaugh's opinion "is a superficial analysis that does not give any credence at all to the Calpines of the world," referring to electric utility Calpine that supported EPA in the case. Calpine is one of a group of "clean" utilities using a high percentage of gas-powered, nuclear or renewable generation that backed CSAPR, and in particular EPA's consideration of cost-effectiveness in the rule. The source says it is a "reasonable prospect" that the D.C. Circuit's opinion is the "death knell" for interstate trading in interstate transport rules.

Further, when EPA reconsiders CSAPR on remand, it would be "indefensible" for the agency to do so without re-gearing the rule to meet current NAAQS. Failure to issue a revised transport rule that seeks to meet the latest NAAQS would "provoke a slam-dunk lawsuit from public health advocates," the source says. -- Stuart Parker

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News Headline: INDUSTRY MAKES LATE PUSH TO EASE EPA'S METHANE PLAN FOR 'NEW' LANDFILLS |

Outlet Full Name: Inside EPA
News Text: Industry groups are making a last-minute lobbying push to soften EPA's pending plan regulating releases of methane, a potent greenhouse gas (GHG), from new landfills, fearing the rule will force installation of costly emissions controls at existing facilities that make modifications since few new landfills are being built.

The industry groups are also renewing a series of concerns they have previously expressed over the plan, including over its regulatory thresholds, economic analysis and technical assessments.

Officials from industry giant Waste Management, as well as the National Waste and Recycling Association, Republic Services and the Small Business Administration's (SBA) Office of Advocacy, raised the concern during a July 24 meeting with officials from the White House Office of Management & Budget (OMB) and EPA, according to OMB's website.

The meeting revolved around two upcoming EPA proposals that are currently under OMB review, including the agency's proposed emissions guidelines (EG) for existing landfills, as well as a supplement to the agency's previously proposed new source performance standards (NSPS) for landfills, the agency's first attempt to directly regulate methane from the facilities.

OMB began formal review of the two documents June 22. OMB review typically takes 90 days, which would mean the proposals could be released for public comment as early as the end of this month, though review can often take longer.

Both measures are part of a broader White House strategy to reduce emissions of methane, a GHG that is as much as 28 times more potent than carbon dioxide. According to the White House, landfills account for 18 percent of total U.S. methane emissions, making them the third largest domestic source of human-related GHG emissions.

EPA published its original proposed NSPS, as well as an advance notice of proposed rulemaking (ANPR) for existing landfills, July 1 of last year, with a comment deadline of Sept. 15, 2014. The simultaneous submission of an NSPS supplemental proposal and proposed EG for existing landfills for OMB review earlier this summer signals that the agency is on track to finalize rules for both new and modified and existing landfills at the same time.

However, EPA is not on track to finalize an NSPS by Aug. 20, the extended deadline set by a settlement in the lawsuit Environmental Defense Fund (EDF) v. Gina McCarthy in the United States District Court for the Southern District of New York.

In the 2011 case, EDF petitioned for EPA to update the standards for new and modified landfills, which had not been revised since 1996. The subsequent 2012 settlement established a May 1, 2013, deadline for EPA to publish a proposed NSPS and a May 1, 2014, deadline for the agency to finalize a rule -- the latter of which has been extended three times, most recently to Aug. 20 in a July 16 filing. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183881)

But little is known about what is included in the brief supplement to the NSPS. An industry source said in June that EPA "didn't re-propose the whole rule so it must just be a single thing or a very small number of changes."

In addition, the source expects the proposed EG for existing landfills to "look very similar to the NSPS," an approach the source said was acceptable so long as it includes the additional flexibilities industry recommended for the NSPS.

According to a presentation at the meeting, the industry is primarily concerned that EPA's proposed NSPS does not provide sufficient flexibility for older landfills that could become subject to the NSPS due to modifications.

In comments on the original proposed NSPS, Waste Management argued that few new landfills are being built, so it is much more likely that expansions of existing sites would trigger the NSPS.

In the OMB handout, the groups criticize EPA's proposed lowering of the regulatory threshold for annual emissions, used to determine when landfills are required to install gas collection and control systems, from 50 megagrams per year (Mg/year) of non methane organic compound (NMOC) to 40 Mg/year.

This lower threshold would "significantly affect existing, particularly older and closed landfills that struggle to operate" gas collection and control systems at the current threshold, a factor that EPA did not consider in its cost-benefit analysis, the groups write in the handout.

"Lowering the threshold would force them to operate longer and use more fossil fuel to keep flares operational (highly counterproductive from a GHG standpoint)," the groups continue, adding that if the agency decides to maintain the lower threshold a subcategory should be established for closed sites and portions of sites to allow them more flexible options.

Industry groups do, however, back EPA's decision to maintain the current design capacity threshold -- a measure of the size of landfills -- from the current NSPS.

Lowering the threshold below the current design capacity of 2.5 million Mg would "only capture old, predominantly closed landfills with no source of revenue to support compliance," they say.

Another concern of the industry groups is EPA's proposed elimination of a provision allowing exemption for start up, shutdown and malfunction events. Eliminating the current provision would be "asking the impossible -- that a gas collection system will never go offline or need repair," the groups write.

They add: "Unlike a typical manufacturing operation, a landfill cannot be turned off." Therefore, removing the exemption for start up, shutdown and malfunction events would be "inconsistent with [EPA's] obligation to establish standards that are achievable during all periods of operation."

In addition, the groups oppose proposed numerical standards for filtration and dewatering of landfill gas, arguing that the standards would be costly without providing any emissions reductions benefits.

The groups in the handout also offer their support for a number of technologies, including open flares, which they maintain should remain part of EPA's determined best system of emission reduction (BSER), and surface emissions monitoring.

And the groups call for the quick proposal of a federal implementation plan (FIP) for the new EG rule, in order to help guide states' development of plans and ease their compliance with the new rules once finalized.

Industry's focus appears to signal a slight departure from much stronger comments submitted on the original proposed NSPS that questioned EPA's approach to the standards and its ability to regulate existing landfills. Many industry groups argued the agency did not allow enough time for review and comment of the proposed NSPS, accusing EPA of rushing the process to attempt to meet its court-established deadline.

In addition, Waste Management in its comments to the proposal claimed there was significant overlap between the proposed NSPS and the ANPR for existing landfills, making it "very difficult to determine where the scope of one proposal ends and the other begins." Such confusion could allow the company grounds to sue, as it claims the plan fails the test of "reasoned decisionmaking."

And Waste Management charged that EPA may not have the legal authority to regulate existing landfills because section 111(d) of the Clean Air Act does not include review procedures to tighten rules for sources already complying with an existing standard.

Still, environmentalists in comments to the original proposed NSPS argued for even stricter standards. For example, in its Sept. 15 comments, the Center for Biological

Diversity and Friends of the Earth encouraged EPA to use larger global warming potential (GWP) values for methane than in the proposal, which would result in greater benefits from the rules.

They also urged EPA to cover start up, shutdown and malfunction operations under the standard and to use a lower NMOC emissions threshold, among other recommendations. -- Abby Smith

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News Headline: FACING SUITS, EPA'S FINAL ESPS LAYS GROUND FOR BROAD LEGAL DEFENSE |

Outlet Full Name: Inside EPA
News Text: Faced with expected suits from scores of parties, EPA's final greenhouse gas (GHG) standards for existing power plants offers a formal defense to many of the premiere legal arguments that critics plan to raise, including the agency's underlying legal authority to issue the rule and its ability to set targets based on supply-side changes to the power sector.

It also rejects critics' claims that the rule will unlawfully reshape the power sector, that it unconstitutionally "commandeers" states into writing compliance plans, and that the agency lacks authority to set binding state targets and can merely issue a "procedure" for states to follow when crafting standards.

The legal justifications, contained in EPA's final existing source performance standards (ESPS), are important because they will be central to litigation over the rule, given early promises from state and industry critics to file a host of challenges.

Ohio-based coal mining firm Murray Energy Corp., which is already pursuing two legal challenges to block EPA from finalizing the rule, announced Aug. 3 at it will file five new lawsuits seeking to block EPA's "flagrantly unlawful" ESPS after the rule is published in the Federal Register.

And West Virginia Attorney General (AG) Patrick Morrisey (R), who is also leading state litigation to block the rule's finalization, said he would form a coalition of "many states, consumers, mine workers, coal operators, utilities and businesses" to begin formulating a legal challenge to the final rule, which he called a "radical and illegal policy."

A group of 16 state AGs on Aug. 5 then announced they are asking the agency to voluntarily stay the ESPS until litigation over the rule is resolved, the first formal challenge to the regulation since its unveiling -- though EPA is almost certain to deny the request.

One critical legal argument over the rule will be the threshold question of whether the agency has the legal authority to regulate power plants' GHG emissions under section 111(d) of the Clean Air Act, given that it already regulates plants' mercury emissions under section 112.

ESPS opponents argue that a "plain reading" of section 111 prohibits EPA from restricting plants' GHG emissions, but the issue is uncertain due to differing House and Senate amendments to section 111(d) that were never reconciled before the 1990 air act amendments were signed into law.

The Senate amendment would explicitly allow EPA's proposed rule by limiting section 111(d)'s "112 exclusion" to pollutants already regulated under that section. The House amendment could be read as prohibiting the rule because it focuses on source categories, not pollutants.

But the issue has never been addressed on the merits by a federal court, although it is currently being litigated in ongoing suits brought by Murray Energy and other industry groups, as well as West Virginia and other states, who challenged the proposed version of the rule.

The U.S. Court of Appeals for the District of Columbia Circuit earlier this year declined to hear the petitioners' suits on procedural grounds, finding the litigation was premature. But petitioners have since asked the court to rehear the litigation -- or in the alternative to allow new litigation over the final rule to be heard by the same three-judge panel that the critics believe is favorable.

In the pending litigation, EPA offered a range of potential interpretations of the House amendment, including a 2005 interpretation, the agency's most recent, that had sought to reconcile the two provisions.

But in the final ESPS, EPA adopts a new formal interpretation, saying that the House amendment alone would permit the rule.

"EPA has concluded that the two differing amendments are not properly read as conflicting. Instead, the House amendment and the Senate amendment should each be read to mean the same in the context presented by this rule: that the Section 112 Exclusion does not bar the regulation under [air act] section 111(d) of non-[hazardous air pollutants (HAP)] from a source category, regardless of whether that source category is subject to standards for HAP under [air act] section 112," EPA says.

EPA's new interpretation finds that, even when only considering the House amendment, it has authority to issue the ESPS. The agency says the House language would allow the rule in part because it must be read in context of Congress' broader goals in creating section 111 and the overall air law.

It says the new interpretation is reasonable -- and thus worthy of judicial deference under the Supreme Court's Chevron precedent -- because it would not create "a wholesale exclusion" of source categories from section 111 regulation, but rather determine "the scope" of regulated pollutants.

Also, its interpretation "furthers -- rather than undermines -- the purpose" of section 111(d), and remains "consistent with the legislative history" that Congress intended in 1990 to "expand EPA's regulatory authority across the board, compelling the agency to regulate more pollutants, under more programs, more quickly."

Among several possible readings of the House language, EPA identifies only one as detrimental to the final ESPS. Were a court to determine that particular reading is valid, "that would not be the end of the analysis," EPA argues.

"Instead, that reading would create a conflict between the Senate amendment and the House amendment that would need to be resolved," the agency adds, arguing that the agency would then revert to its interpretation in the proposed ESPS, in which a section 112 rule would prohibit EPA from regulating that sector's HAP emissions under section 111, while still leaving authority to regulate GHG emissions from the same source category under section 111.

EPA also responds to critics' claims that its ESPS targets for states must be based on measures that can be implemented "inside the fence line" of power plants. For example, an industry attorney says the final rule's targets, by relying heavily on building new renewable energy, are "unhinged from the limited statutory authority of Section 111(d)."

The agency argues that the statutory basis for targets -- the "best system of emission reduction" -- is "capacious enough" to include actions taken by power plant owners or operators, "including actions that may occur off-site and actions that a third party takes pursuant to a commercial relationship with the owner/operator, so long as those actions enable the affected source to achieve its emission limitation."

The agency adds that building blocks 2 and 3 -- which rely on greater use of natural gas and renewables to displace coal power -- fall within that framework "because they consist of measures that the owners/operators of the affected [power plants] can implement to achieve their emission limits."

EPA rejects industry's source-specific interpretation of the statute, arguing, "it is common sense that buildings, structures, facilities, and installations can take no actions."

The agency also offers a limiting principle to its target-setting authority, saying the air act focuses "on how to most cleanly produce a good, not on how much of the good should be produced."

The agency adds: "Building blocks 2 and 3 entail the production of the same amount of the same product -- electricity, a fungible product that can be produced using a variety of highly substitutable generation processes -- through the cleaner (that is, less CO2-intensive) processes of" shifting coal generation to gas or renewables.

The legal reasoning on this issue is a key reason why EPA dropped the proposed block 4 -- which would have set targets based on an assumed level of end-use energy efficiency.

"The focus under the Clean Air Act has really been about making manufacturing cleaner, not restricting the amount of manufacturing that can happen," acting EPA air chief Janet McCabe said during an Aug. 3 call with environmental justice advocates. She added, "In this [rule], what is being manufactured is electrons. The first three building blocks are directly within that precedent, squarely within how we write these rules. Demand-side energy efficiency is not."

Further, EPA in the rule says dropping block 4 allays concerns that "individuals could be 'swept into' the regulatory process by imposing requirements on 'every household in the land.'" By not including block 4, the final rule "resolves any doubt on this matter."

EPA also says its rule does not run afoul of language in the 2014 high court ruling in Utility Air Resources Group v. EPA, in which the court said it is skeptical "When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy.'"

The agency says that critics "appear to interpret" the ruling as prohibiting the agency from basing state goals on renewable power, which has not previously been subject to the air act. "However, in this rule, the EPA is not attempting to subject any entity other than the affected" power plants to agency regulation.

The agency adds that it is not finalizing its "portfolio approach" that would allow states to include in compliance plans "federally enforceable requirements on entities other than affected" power plants. As such, the only regulated entities in state plants would be power plants, and other entities "and the parts of the economy that they represent will not be regulated by the EPA."

EPA also rejects opponents' constitutional arguments -- most prominently offered by Harvard Law professor Laurence Tribe -- that the rule would "coerce" or "commandeer" states into taking actions in order to avoid a federal plan or the loss of federal funds.

This argument gained ground after the high court, in National Federation of Independent Businesses v. Sebelius, vacated portions of the federal health care law that sought to require states to expand the Medicare program.

But EPA says the ESPS' structure of offering states the opportunity to craft a compliance plan instead of sources facing federal limits "is consistent with ordinary cooperative federalism regimes that federal courts have routinely upheld against Tenth Amendment challenges," the rule says.

Also, states that decline to craft plans "will not face the prospect of sanctions, such as withdrawn federal highway funds."

"The EPA never intended to even imply that we would contemplate using this authority [for highway fund sanctions in Clean Air Act section 110(m)] to encourage state participation in this rule under section 111," the agency says, noting it included an provision in the final rule explicitly prohibiting the agency from imposing highway fund sanctions for states that do not submit or implement a compliance plan.

EPA also faces a question of whether it can set binding targets for states, or whether the air act limits the agency to creating a "procedure" for how states can set their own standards.

An Aug. 4 client alert from the law firm King & Spalding notes that since the law directs states to craft performance standards, "Arguably, by specifying emission rates that must be met by the states, EPA's rule may go beyond its authority under Section 111(d)."

Also, a group of 17 GOP AGs said the issue is one of six "legal deficiencies" in formal comments urging EPA to withdraw the proposed rule.

But in the final ESPS, EPA notes that it is following the practice for crafting section 111 rules laid out in a 1975 implementing regulation that is still in effect.

That rule "carefully considered the allocation of responsibilities as between the EPA and the states for purposes of [air act] section 111(d), and concluded that the EPA is responsible for determining the level of emission limitation from the source category, while the states have the responsibility of assigning emission requirements to their sources that assured their achievement of that level of emission limitation."

EPA argues that Congress in subsequent 1977 amendments to the air law endorsed this approach, and that EPA "has followed the same approach in all subsequent section 111(d) rules." -- Lee Logan & Abby Smith

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News Headline: DOJ DEFENDS CWA RULE 'NEXUS' TEST, FIGHTS PUSH FOR INJUNCTION OF POLICY |

Outlet Full Name: Inside EPA
News Text: The Department of Justice (DOJ) in new legal filings is defending the "significant nexus" test in the administration's Clean Water Act (CWA) jurisdiction rule as legally valid, while it pushes back on requests from a coalition of states to impose a preliminary injunction to block the regulation until their litigation over the policy is resolved.

The new filings are in one of the many federal district court challenges that have been filed over the rule, which industry groups, some states and other critics say expands the water law's reach far beyond what Congress intended and will lead to costly and burdensome new CWA requirements for previously unregulated waters. Appellate suits over the rule have been consolidated in the U.S. Court of Appeals for the 6th Circuit.

The rule is designed to resolve uncertainty about the reach of the law following the 2006 Supreme Court ruling Rapanos v. United States that created competing tests for assessing CWA jurisdiction.

In the ruling, Justice Anthony Kennedy said in a concurring opinion that wetlands, whether "alone or in combination with similarly situated lands in the region," pose a "significant nexus" and are jurisdictional when they "significantly affect the chemical, physical, and biological integrity" of downstream, traditionally navigable waters.

By contrast, the plurality opinion in Rapanos written by Justice Antonin Scalia held that only "relatively permanent" waterbodies that connect to traditional navigable waters and wetlands that have a "continuous surface connection" to such relatively permanent water bodies, are jurisdictional under the water law.

The final rule adopts the language from the Kennedy test, finding that tributaries and "adjacent waters" share a significant nexus with downstream waters and are jurisdictional, and identifying specific types of other waters, such as prairie potholes, that could share a significant nexus to be assessed on a case-by-case basis.

But states and industry groups challenging the rule in the roughly two dozen appeals and federal district court cases argue that the agencies overstep their CWA authority by seeking to interpret Rapanos through rulemaking and that their interpretation is "inconsistent" with the Kennedy opinion, according to a July 21 motion filed by a coalition of 11 states in the U.S. District Court for the Southern District of Georgia case State of Georgia, et al. v. Regina McCarthy, et al. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183783)

The motion argues that the rule violates constitutional protections for state sovereignty by imposing costly regulatory burdens on waters previously governed solely under state laws, the Commerce Clause and the Administrative Procedure Act. The states ask the court for a preliminary injunction on implementing the rule until

the suit is resolved.

But DOJ counters in a July 31 motion opposing a preliminary injunction that "Kennedy expressly invited rulemaking, stating that '[a]bsent more specific regulations, [ ] the Corps must establish a significant nexus on a case-by-case basis when it seeks to regulate wetlands based on adjacency to nonnavigable tributaries.'"

DOJ argues that the agencies have "done precisely that" by issuing the final CWA rule, and that its definition of significant nexus is "based on a robust record that includes, inter alia, peer-reviewed scientific analyses, technical information, and public comments."

In two other pending district court cases in the U.S. District Court for the Northern District of Oklahoma, Oklahoma v. EPA and Chamber of Commerce of the U.S. v. EPA, plaintiffs are also seeking injunctions raising the same arguments as in State of Georgia. In those cases, the court issued a stay July 31 pending EPA's request to consolidate the ten district court cases to the U.S. District Court for the District of Columbia.

The pending appellate cases July 28 have been consolidated into one 6th Circuit suit, In re Final Rule: Clean Water Rule: Definition of "Waters of the United States."

DOJ is seeking a stay in all of the pending cases until the 6th Circuit rules on whether it has jurisdiction to hear the case. Many environmental statutes, including the Clean Air Act and the Resource Conservation & Recovery Act, provide that judicial review of final agency rules must proceed in a court of appeals as opposed to a federal district court. But section 509 of the CWA says that only specific types of rules must be initiated at the appellate level.

Section 509 of the CWA says that legal challenges to approval or promulgation of any effluent limitation "or other limitation" under sections 301, 302, 306, or 405, permit approvals under section 402, or individual water quality control strategies under section 304 must seek initial review in an appeals court.

However, the jurisdiction rulemaking does not fall within a specific section of the water law, and so the open question is whether it will be considered as an "other limitation" under the courts.

DOJ argues in the July 31 motion filed in the Georgia federal district court case that because it identifies what "water bodies will require CWA permits when pollutants are discharged into them rather than purely exempt a category of activities from permitting requirements," the rule constitutes both a "limitation" under Section 509(b)(1)(E) and an underlying permitting regulation under Section 509(b)(1)(F).

DOJ argues that because the district court lacks jurisdiction, it also lacks the authority to issue the injunction, citing a 2010 11th Circuit decision in Bank of

America National Association v. Colonial Bank .

To grant an injunction, a plaintiff must show likelihood of success on the merits, irreparable harm in the absence of preliminary relief, a balance of equities in their favor and that the injunction is in the public interest. In the motion, DOJ argues that the states cannot show irreparable harm.

"Plaintiffs have not shown any harm as a result of the Clean Water Rule, much less irreparable harm that would justify this Court to use its equitable authority to grant preliminary relief," the motion says. -- Bridget DiCosmo

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News Headline: Air Pollution in China Is Tied to 1.6 Million Deaths a Year |

Outlet Full Name: New York Times, The
News Text: BEIJING -- Outdoor air pollution contributes to the deaths of an estimated 1.6 million people in China every year, or about 4,400 people a day, according to a newly released scientific paper.

The paper maps the geographic sources of China's toxic air and concludes that much of the smog that routinely shrouds Beijing comes from emissions in a distant industrial zone, a finding that may complicate the government's efforts to clean up the capital city's air in time for the 2022 Winter Olympics.

The authors are members of Berkeley Earth, a research organization based in Berkeley, Calif., that uses statistical techniques to analyze environmental issues. The paper has been accepted for publication in the peer-reviewed scientific journal PLOS One, according to the organization.

According to the data presented in the paper, about three-eighths of the Chinese population breathe air that would be rated "unhealthy" by United States standards. The most dangerous of the pollutants studied were fine airborne particles less than 2.5 microns in diameter, which can find their way deep into human lungs, be absorbed into the bloodstream and cause a host of health problems, including asthma, strokes, lung cancer and heart attacks.

The organization is well known for a study that reviewed the concerns of people who reject established climate science and found that the rise in global average temperatures has been caused "almost entirely" by human activity.

The researchers used similar statistical methods to assess Chinese air pollution. They analyzed four months' worth of hourly readings taken at 1,500 ground stations in mainland China, Taiwan and other places in the region, including South Korea. The group said it was publishing the raw data so other researchers could use it to perform

their own studies.

Berkeley Earth's analysis is consistent with earlier indications that China has not been able to successfully tackle its air pollution problems.

Greenpeace East Asia found in April that, of 360 cities in China, more than 90 percent failed to meet national air quality standards in the first three months of 2015.

The Berkeley Earth paper's findings present data saying that air pollution contributes to 17 percent of all deaths in the nation each year. The group says its mortality estimates are based on a World Health Organization framework for projecting death rates from five diseases known to be associated with exposure to various levels of fine-particulate pollution. The authors calculate that the annual toll is 95 percent likely to fall between 700,000 and 2.2 million deaths, and their estimate of 1.6 million a year is the midpoint of that range.

The Chinese government is sensitive about public data showing that air pollution is killing its citizens, or even allusions to such a conclusion. Though the authorities have gradually permitted greater public access to air quality readings, censors routinely purge Chinese websites and social media channels of information that the ruling Communist Party worries might provoke popular unrest. In March, after a lengthy documentary video about the health effects of air pollution circulated widely online, the party's central propaganda department ordered Chinese websites to delete it.

Much of China's air pollution comes from the large-scale burning of coal. Using pollution measurements and wind patterns, the researchers concluded that much of the smog afflicting Beijing came not from sources in the city, but rather from coal-burning factories 200 miles southwest in Shijiazhuang, the capital of Hebei Province and a major industrial hub.

Promises to clean up Beijing's air were a centerpiece of the nation's bid to host the 2022 Winter Olympics. The mayor of Beijing, Wang Anshun, championed restrictions on vehicles in the city, and state news media outlets lauded projects to replace coal-fired heating systems in urban areas with systems that use natural gas and generate far less particulate pollution.

"We will improve the air quality not only for the Games, but also for the demand of our people," said Shen Xue, an Olympic gold medalist and ambassador for the 2022 bid, according to a report last month by Xinhua, the state news agency.

The Berkeley Earth paper showed, however, that to clear the skies over Beijing, mitigation measures will be needed across a broad stretch of the country southwest of the capital, affecting tens of millions of people. "It's not enough to clean up the city," said Elizabeth Muller, executive director of the organization. "You're going to also have to clean up the entire industrial region 200 miles away."

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News Headline: Money, politics and global warming make for a dangerous mix ; Because of political opposition, government action to lower carbon emissions may fall short. |

Outlet Full Name: Portland Press Herald
News Text: Money, politics and global warming make for a dangerous mix

YORK HARBOR -- The burning of fossil fuel (oil, gas and coal) supported our industrial growth for over 150 years, but according to our scientists, it's now starting to saturate our atmosphere with carbon dioxide, which is increasing global temperatures. As a result, our oceans are rising and extreme weather is becoming both more common and more dangerous.

Because of misguided political opposition, however, government action to lower these carbon emissions may fall short of the levels needed to stem global warming and its consequences.

James Lawrence Powell was appointed to the National Science Board by Presidents Reagan and George H.W. Bush and served for 12 years. He holds a doctorate in geochemistry from MIT.

Powell conducted a review of peer-reviewed scientific articles on the topic of global warming. He found that 24,210 articles were written on climate change by 69,406 scientists from around the world in 2013 and 2014.

Of those authors, 69,402 (99.9 percent) indicated that global warming is caused by human activity (burning fossil fuel), with only four scientists indicating that global warming is not caused by human activity.

This year, the U.S. Senate voted overwhelmingly in favor of a resolution saying that "climate change is real and not a hoax," only to turn around and, 15 minutes later, narrowly reject another symbolic, nonbinding measure, which declared that "human activity significantly contributes to climate change."

The second resolution was defeated by 49 Senate Republicans who believe that burning fossil fuel does not cause climate change. (Susan Collins of Maine was one of five Republicans to support the measure.)

Why are those elected officials ignoring the obvious consensus among scientists on this important issue? The powerful fossil fuel industry and their lobbyists are taking control of this debate. We can thank Chief Justice John Roberts' Supreme Court for removing the cap on campaign funding from corporations seeking to gain political

influence.

This unlimited flow of money into the campaigns of our elected officials provides a way for corporations to shift political sentiment to their business interests and goals. That money is now putting the safety and well-being of U.S. citizens at risk.

Clean-energy technologies, including solar, wind, hydro and electric vehicles, are providing us with an opportunity to dramatically reduce our carbon emissions and, in time, reduce our energy costs.

Solar energy converts a ray of sunshine directly into electricity, using no moving parts and causing no pollution. That's a sustainable energy source that flows to our planet each day for free.

Getting electricity directly from sunshine and storing it for use at night and on cloudy days is not science fiction. The cost of capturing and storing solar energy has dropped by 50 percent in the last 10 years and is still coming down.

Electric vehicles will be a good thing when our grandchildren are standing on a street corner with their own children waiting to cross and the vehicles passing directly in front of them have no exhaust pipes blowing carbon monoxide fumes into their lungs.

Government subsidies for clean-energy technology will continue to be needed for ongoing research and development, as well as pricing incentives until manufacturing production can scale to increasing demand. Governments around the world are making major investments in clean energy. China is rapidly becoming the global leader in clean- energy manufacturing.

From the 1950s through today, U.S. taxpayers have spent over $600 billion on government subsidies for the oil, gas and coal industries - and that doesn't include the massive health and pollution costs.

U.S. energy policy and those large energy subsidies might have helped to avoid the situation we are currently in, had we shifted that money into clean energy 60 years ago. Bell Labs developed the technology for solar energy in 1954.

The International Energy Agency, headquartered in Paris with 29 of the world's largest countries participating, reported that solar energy has the potential of becoming the world's largest source of electricity by 2050.

But of all those participating countries, I expect the United States may experience the slowest growth rate in solar-generated electricity because of the politics and special interest money trying to stop it. Special interest money against science and innovation makes America weak.

I am hoping that during this upcoming presidential election season, we might hear from our candidates how they will move America forward with a new vision for clean, sustainable energy and the good- paying jobs that come with it. But I'm afraid that money and not common sense will once again be the guiding force of American politics.

-- Special to the Press Herald

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News Headline: Tyngsboro waste dump will soon be clean energy source |

Outlet Full Name: Sun Online
News Text: ...praised by town officials as a plan that will generate money from the Superfund site. The project that Tyngsborough Solar, LLC plans...

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News Headline: Vermont officials to discuss Lake Champlain cleanup plans |

Outlet Full Name: Advocate Online, The
News Text: BURLINGTON, Vt. (AP) — Gov. Peter Shumlin and officials with the federal Environmental Protection Agency are going to be talking...

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News Headline: R.I. communities receiving brownfields grants to clean up sites |

Outlet Full Name: Providence Journal Online, The
News Text: ...FALLS, R.I. — At a ceremony beside the Blackstone River Thursday, the U.S. Environmental Protection Agency joined the...

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News Headline: Vermont officials to discuss Lake Champlain cleanup plans |

Outlet Full Name: Associated Press
News Text: BURLINGTON, Vt. (AP) - Gov. Peter Shumlin and officials with the federal Environmental Protection Agency are going to be talking about plans to clean up Lake Champlain.

Shumlin will be meeting the officials Friday at Burlington's North Beach.

In June Shumlin signed the law that will help provide millions of dollars to help clean up the lake by keeping pollutants from the rivers and streams that feed into it.

The new law - prompted in part by late-summer algae blooms in shallow parts of the lake that have come to symbolize its declining fortunes - promises to provide tens of millions of dollars a year to help pay for cleanup projects. But it also carries penalties for people who refuse to comply.

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News Headline: EPA test results show mine spill unleashed highly toxic stew |

Outlet Full Name: Associated Press Online
News Text: AP Photo/Jon Austria DURANGO, Colorado (AP) -- The U.S. Environmental Protection Agency on Thursday said its surface-water...

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News Headline: Damages in Colorado mine spill will take years to tabulate |

Outlet Full Name: Boston Herald Online
News Text: DURANGO, Colorado -- The spill of toxic wastewater from an abandoned gold mine high in Colorado's San Juan Mountains caused untold millions...

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News Headline: EPA test results show mine spill unleashed highly toxic stew |

Outlet Full Name: Boston Herald Online
News Text: DURANGO, Colorado — The U.S. Environmental Protection Agency on Thursday said its surface-water testing done before, during and...

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News Headline: EPA test results show mine spill unleashed highly toxic stew |

Outlet Full Name: Foster's Daily Democrat Online
News Text: SILVERTON, Colorado — The U.S. Environmental Protection Agency announced Thursday that surface-water testing revealed very high...

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News Headline: 'Operation Clean Sweep' Coming To Hartford's Most Blighted Streets |

Outlet Full Name: Hartford Courant Online
News Text: ...on the curb. The junk will be sorted and hauled away to disposal yards and recycling facilities. Can't haul out that pet-stained couch in...

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News Headline: EPA'S COLORADO SPILL COULD BOOST PUSH FOR BROAD MINING POLICY REVISIONS |

Outlet Full Name: Inside EPA
News Text: EPA's accidental release of 3 million gallons of contaminated mine wastewater from a Colorado mine during a cleanup operation could boost a push for broad revisions to federal mining policies including calls for EPA Superfund financial assurance rules for mining and changes to Good Samaritan law, environmentalists say.

The Aug. 5 spill of wastewater containing several heavy metals has already prompted legal threats which could, if pursued, result in a precedent-setting court ruling on whether EPA is liable for the spill under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the Superfund law. Attorneys say that CERCLA includes broad protections against liability for EPA when it performs a site cleanup.

EPA Administrator Gina McCarthy in an Aug. 12 statement said as a result of the spill she has ordered all agency regional offices to "immediately cease" all field investigations at mining sites unless imminent risk is present until the agency can assess the root causes of the spill at the Gold King Mine in Colorado. The spill was the result of an accidental release triggered by an EPA cleanup team's work at the mine, located in the state's San Juan County.

The release has flowed into the Animas River through southwestern Colorado into New Mexico and the Navajo Nation, triggering states of emergency in both states and a threat of legal action from the Navajo Nation.

It has triggered high-level attention, with daily press briefings from three EPA regional administrators and an Aug. 12 visit to Colorado and New Mexico by McCarthy to inspect response efforts, including water quality sampling and validation of water quality data. Colorado's Department of Public Health and Environment on Aug. 12 told the city of Durango, CO, that drinking water treatment

facilities can begin to use the Animas River to collect and treat water for customers, and said that regarding private water systems, not all wells are affected by the spill.

McCarthy in her Aug. 12 statement said, "We are in the process of initiating an independent assessment by a sister federal agency or another external entity to examine the factors that led to last week's incident. Based on the results of that study, she said, "we will determine what actions may be necessary to avoid similar incidents at other sites."

Further, she has told regions to identify sites similar to the Gold King Mine, "and to identify any immediate threats and consider appropriate response actions" while it plans its cleanup work at the mine.

EPA's eventual short- and long-term cleanup strategies could also set a precedent for responding to future, similar spills -- but the accident is also prompting renewed calls for other mining policy reforms.

Environmentalists point to the spill as highlighting the need for regulatory or legislative measures affecting mine cleanups in order to better protect against adverse environmental impacts.

For instance, a spokeswoman for Earthworks, an environmental group that has sued EPA for failing to issue bond rules under CERCLA for the mining sector, says the spill "highlights the need for CERCLA financial assurance regulations" as it underscores "the severity of environmental impacts that can occur if a mine site is allowed to fester because financial assurance isn't available or adequate for cleanup." She says this is particularly the case for mines with long-lasting water treatment requirements from acid mine drainage.

Earthworks is one of several environmental groups that sued EPA arguing the agency is long past due in developing CERCLA financial assurance rules to require owners of hazardous waste facilities to prove they have sufficient funds to pay for cleanup, accidental releases and post-closure care should any of those measures be needed.

The petitioners are working to reach agreement with EPA on a schedule for the agency's issuance of such rules governing the hardrock mining industry after a federal appellate court ruled in May that EPA should update and expedite its schedule for issuing the rules and submit a joint plan with the petitioners to the court. EPA in recent months has said it plans to issue a draft version of the hardrock mining rules next August.

Environmentalists say the mine spill also should prompt reforms to outdated mining laws. While the spill "is tragic," Earthworks' Pete Dronkers says in an Aug. 11 blog post on the group's website, "the focus should be less on the crew that accidentally triggered the release, and more on the broader story of entire regions throughout the country, facing immense cleanup challenges from mines of the past."

He says given the tens of thousands of abandoned mines and inactive mines that leak -- impacting water quality -- now is the time to urge "elected officials and regulators to create the framework needed to address the broader problems." Specifically, the 1872 mining law does not require companies to pay any royalty payments to the federal government, and allows new mega-mines to be built with perpetual mine drainage, he says.

Reforming the law is overdue, he says. "By placing a federal prohibition on new mines that we know will pollute forever we will make sure that no mine gets built that can't clean up after itself. And by making mining companies help pay to correct past mistakes, we can make sure agencies and citizen groups have the money they need to do remediation projects properly and holistically, not pinching pennies and cutting corners because of federal budget cuts," he adds.

While mining reform legislation has been introduced in recent years, Democratic and Republican lawmakers have differed over key details, particularly over first-time royalty fees to pay for an abandoned mine cleanup fund.

The spill also underscores the need to revisit Good Samaritan legislation, says a source with the San Juan Citizens Alliance, which has long advocated for addressing acid mine drainage along the Animas River.

While EPA has sought to promote "Good Samaritan" cleanups of mine sites through guidance aimed at reducing Clean Water Act (CWA) liability for innocent groups that voluntarily clean up abandoned hardrock mines, some groups have advocated for additional liability protections under the law to prompt such cleanups.

Voluntary parties -- known as Good Samaritans -- have been reluctant to clean up abandoned mines because of concerns that courts will hold them liable under CERCLA and the CWA for remaining contamination. Legislation attempting such changes has not passed, however. Environmental groups have not universally embraced Good Samaritan legislation, fearing it will give mining companies unanticipated loopholes to exploit, the citizens' alliance source says.

EPA estimates there are about 500,000 abandoned mines, which could cost more than $35 billion to clean up. Historic mines have polluted the headwaters of 40 percent of the watersheds in the West.

The spill also underscores that stakeholders in downstream communities across a watershed -- not just those closest to a mining site -- should be given weight by EPA when considering stakeholder input into a cleanup, the source says. The Silverton, CO, community -- surrounding the mine -- had resisted a Superfund listing designation for the site, the source says, but notes that community was the least affected by the spill compared to downstream communities. The site is not listed on Superfund's National Priorities List, but rather was part of an EPA response action.

Meanwhile, top lawmakers on the Senate Environment & Public Works (EPW) Committee indicated this week they are closely monitoring EPA's cleanup of the Animas River spill, with EPW Chairman Jim Inhofe (R-OK) saying in a statement he will work within his committee "to ensure the EPA is held accountable to this grave incident."

EPW ranking member Barbara Boxer (D-CA) in an Aug. 11 letter to McCarthy called on EPA to ensure timely information be provided to communities on the spill and urged the agency "to take steps to ensure that a similar incident does not happen in the future," as well as asking EPA to brief her office. The letter is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183937)

In the House, Natural Resources Committee Chairman Rob Bishop (R-UT) on Aug. 12 announced his plan to visit Lake Powell, a reservoir on the Colorado River on the border of Utah and Arizona.

"EPA's grave blunder is posing a serious threat to both the environment and the economy in Colorado, New Mexico, Utah, and Arizona. Lands and projects managed by the Department of the Interior and Forest Service - not to mention the tribal concerns -- within my Committee's jurisdiction will be seriously and negatively impacted. In the coming weeks and months, the Committee will be conducting extensive oversight over the causes and the short-term and long-term effects of this serious situation," Bishop said. -- Suzanne Yohannan

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News Headline: EPA FACES UNCLEAR SUPERFUND LIABILITY FOR COLORADO MINE WASTEWATER SPILL |

Outlet Full Name: Inside EPA
News Text: EPA is facing a lawsuit from at least one tribe as well as potential legal action by states after an agency cleanup crew caused the release of about 3 million gallons of contaminated wastewater during work at a contaminated mine site in Colorado, but it is unclear whether EPA can be held liable for the spill under the waste law.

Attorneys familiar with cleanup law say that EPA will likely be sued for both natural resource damages and response damages under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the Superfund law, which would address both environmental harms from the spill and the cost of addressing drinking water contamination and other short-term issues respectively.

But the attorneys say that since CERCLA includes broad protections against liability

for EPA when it performs a site cleanup, such suits face uncertain prospects -- and the litigation could set an important precedent on the issue.

Depending on the section of CERCLA the plaintiffs invoke, they might be required to show that EPA's conduct was either tantamount to that of a facility operator rather than a cleanup crew, or that it was provably negligent.

"I am not aware of a case as egregious as this, but I don't know if EPA was negligent. We don't know enough about the facts of the case to know if they did something stupid, or if it was that they were stuck with a mine that was a ticking time bomb. . . . I wouldn't close the door on it, certainly," says a Colorado environmentalist attorney.

Navajo Nation president Russell Begaye is already vowing that his government "will hold EPA accountable" for the Aug. 5 wastewater spill from Colorado's Gold King Mine into Colorado, New Mexico and Navajo waters.

State officials have not yet publicly said what legal measures they will take in response to the release, but they could potentially also pursue litigation. The spill was caused by an EPA team "working to investigate and address contamination" at the site, according to an EPA statement posted to its website Aug. 9.

"I have instructed Navajo Nation Department of Justice to take immediate action against the EPA to the fullest extent of the law to protect Navajo families and resources," Begaye said in an Aug. 9 statement.

According to EPA's statement on the spill, the agency's cleanup team inadvertently caused the release of pent-up wastewater that had been held in the mine by "unconsolidated debris near an abandoned mine portal," but exactly how the incident began has not yet been determined.

CERCLA section 119 exempts cleanup crews, including contractors and government employees, from most liability for releases that come as a result of cleanup efforts in order to avoid discouraging site cleanups.

But courts have allowed suits under that section when the workers' actions amount to a "new release" rather than a cleanup of existing contamination, an industry attorney who focuses on environmental law told Inside EPA.

"There's some 9th Circuit case law and one or two district court provisions that construe the immunity provision and suggest that cleanup crews can be considered 'operators' in that situation," the attorney says.

Under that provision, the attorney continues, "I think EPA or EPA's contractor has some very serious liability concerns here" as a result of the spill.

In addition, section 107, which covers government agencies' immunity from

litigation as institutions, says the agency can be sued in situations where it acts negligently, which could also cover the Gold King Mine spill.

Key to that consideration could be how closely the workers at the mine followed government reference documents, such as the National Contingency Plan (NCP), which sets out procedures for EPA and other agencies to deal with environmental contamination. Section 107 says agencies are protected from liability when they act in accordance with the NCP but not when they are negligent -- but does not specifically say that an agency that follows the NCP cannot be considered negligent.

The industry attorney says that since the NCP is a general document rather than a step-by-step guide to dealing with specific kinds of cleanup efforts, it is unclear how effective it would be as a defense.

"I'm not sure a contractor's argument that they followed the NCP, in itself, would be an absolute defense to a negligence argument," the attorney says.

In addition to the Navajo Nation's promised legal action, both attorneys say it is at least possible that Colorado and New Mexico, the two states that have seen environmental impacts from the spill so far, could also bring suit against the agency for environmental and other damages.

But the environmentalist attorney says that even though both states have historically been aggressive in taking action against federal sites under CERCLA, they might be hesitant to sue EPA directly.

"Even though this is a federal actor, it's a federal actor who gives the states money to run their environmental programs. If it were the Army or [the Department of Energy (DOE)], maybe, but they're used to having EPA more or less on the same side. They would not be in the same category as a federal polluter," the attorney says.

State regulators could also be wary of discouraging EPA from using federal resources to investigate and clean up disused mines for fear of legal action.

"I don't think the state would want to discourage EPA from taking over mining sites in the future. It doesn't seem like a good policy perspective to me, regardless of the law." -- David LaRoss

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News Headline: EPA REVISING PFC WATER CLEANUP ORDER AFTER DISCUSSIONS WITH AIR FORCE |

Outlet Full Name: Inside EPA
News Text: EPA is revising a recently issued water cleanup order for

perfluorochemicals (PFCs) that relies on provisional health advisory levels after the Air Force sought changes to the order, even as lawmakers pressure the service to act quickly to address the contamination.

EPA issued what appears to be a first-time Safe Drinking Water Act (SDWA) administrative order (AO) for the cleanup of PFCs July 9, requiring the Air Force to clean up contamination of a drinking water supply contaminated by PFCs exceeding EPA's provisional health advisory levels and believed to be stemming from Pease Air Force Base (AFB) in Portsmouth, NH. The contaminants are commonly found in firefighting foams that were used by the Air Force to extinguish fires at its facilities and airports.

The Air Force is also under pressure from New Hampshire's senators to comply. In a July 24 letter, Sens. Jeanne Shaheen (D) and Kelly Ayotte (R) pressed the Air Force to immediately comply with the order, saying to Air Force Secretary Deborah L. James that "your failure to move quickly and comply with this Order continues to pose a public health risk to the community."

While an EPA Region 1 spokesman at press time declined to release the order, pending expected amendments the agency says it plans to make, the senators say that at the site's Haven Well -- a public water supply well -- PFCs were detected at more than 12 times EPA's provisional health advisory level. While that well has been shut down, the senators say they fear other nearby wells could be at risk of contamination as they are at a lower gradient than the Haven Well and the contaminants are likely to migrate down-gradient through bedrock. The letter is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183614)

The Air Force in a press release last year acknowledged the exceedance of EPA's provisional health advisory levels at the Haven Well, and identified at least one other private well with an exceedance. The Air Force at the time said it was working with regulators to design a long-term plan to address the contamination.

EPA's water office in 2009 set short-term provisional health advisory levels for the two most common PFCs: groundwater concentrations greater than 0.2 micrograms per liter (ug/l) for perfluorooctane sulfonate (PFOS) and groundwater concentrations greater than 0.4 ug/l for perfluorooctanoic acid (PFOA).

EPA Region 1 in a recent statement says the Pease AFB order requires the Air Force to: "1) design and construct a system within 14 months that can restore the water supply; 2) design a system that could be used to treat the remaining supply if it becomes contaminated; and 3) to expeditiously complete ongoing investigations."

A spokesman for the Air Force Civil Engineer Center in a July 30 written response to questions says the service met with EPA on July 23 to discuss the order and "outline steps to most effectively meet the objectives of the AO and continue to protect the Portsmouth community from drinking water contaminated with PFCs." The EPA

Region 1 spokesman says as a result of the meeting, EPA "agreed to make minor alterations to the Order." When these are finalized, EPA will issue an amended order that supersedes the July 9 document, he says, adding the revised order will be issued no later than early August. The Air Force spokesman says following that issuance, the service will provide a response to EPA on the order.

He says the Air Force places a priority on protecting human health and the environment, and says the service is closely working with EPA on a plan to lower the risk of PFC exposure through drinking water.

EPA's water office last year proposed first-time draft risk estimates for chronic drinking water exposures to these two PFCs, for which EPA will eventually craft final health advisory levels and cleanup requirements at sites contaminated with the substances.

PFCs are emerging contaminants that are "extremely persistent in the environment" and resist typical environmental degradation methods, EPA says in a March 2014 fact sheet. "As a result, they are widely distributed across the higher trophic levels and are found in soil, air, and groundwater at sites across the United States," it says. -- Suzanne Yohannan

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News Headline: EPA chief says polluted Animas River 'seems to be restoring itself' |

Outlet Full Name: Keene Sentinel Online
News Text: ...crucial elements of the state's economy. And they want the federal Environmental Protection Agency, whose workers triggered...

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News Headline: Damages in Toxic Colo. Mine Spill Will Take Years to Tabulate | NECN |

Outlet Full Name: NECN/New England Cable News Online
News Text: The spill of toxic wastewater from an abandoned gold mine high in Colorado's San Juan Mountains caused untold millions in economic...

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News Headline: Central Mass Recycled Metals in Millbury fined for mercury, asbestos violations |

Outlet Full Name: Republican Online
News Text: ...has fined Central Mass Recycled Metals, LLC., which operates a metal recycling business at 14-21 McCracken Road in Millbury, a $36,775...

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News Headline: Earth Overshoot Day: Consuming More Than The Earth Can Give |

Outlet Full Name: Boston.com
News Text: ...TerraPass SOURCE: TerraPass DESCRIPTION: We often talk about the carbon footprint of our consumption, but have you ever wondered...

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News Headline: A climate problem that's understated |

Outlet Full Name: Washington Post Online
News Text: ...throw in the towel on democracy, I wish Mr. Samuelson had expanded his global warming primer to include the fact that Earth is about...

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News Headline: Solid waste master plan suggests further steps to reduce trash thrown away in Amherst |

Outlet Full Name: Amherst Bulletin - Online
News Text: ...waste master plan, developed in recent months by the six-member Refuse and Recycling Committee, contains a series of objectives that, if...

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News Headline: Keystone XL: US review taking 5 times longer than average - The Boston Globe |

Outlet Full Name: Boston Globe Online
News Text: ...permit, the $8 billion project has become a flashpoint in the debate over climate change. Under a George W. Bush-era executive...

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News Headline: Editorial: Seaport council can provide regional boost |

Outlet Full Name: Eagle-Tribune Online, The
News Text: ...everything from waterfront development to infrastructure improvements to emergency response. * Encouraging innovation through...

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News Headline: EPA NOMINEES SEEN HINDERED BY AGENCY SLOWING RESPONSES TO CONGRESS |

Outlet Full Name: Inside EPA
News Text: EPA's long-pending nominees to head top agency offices could face further delays in Senate consideration due to what some observers see as the agency slowing its responses to queries from Congress, as Republican senators have floated the possibility of blocking all nominations until EPA fully answers a host of outstanding queries.

Senate Environment & Public Works Committee (EPW) Chairman Sen. James Inhofe (R-OK) has warned the agency that its nominees could face indefinite "holds" preventing them from committee or Senate floor consideration unless the agency moves more quickly in response to questions and document requests on subjects including its power plant greenhouse gas (GHG) standards and Clean Water Act (CWA) jurisdiction rule.

Currently EPA has vacancies at five assistant administrator offices -- three of which have no formal acting official -- along with the deputy administrator position. Nominees are pending for all six positions.

But environmentalists suggest that EPA might be slowing down its replies and more reluctant to hand over confidential and privileged documents to congressional committees after House Republicans in July released a slew of "sensitive" Army Corps of Engineers memos from the development of the CWA rule.

The document release by the House Oversight & Government Reform Committee included several Corps memos written late in development of the final rule that expressed often-harsh criticism of the regulation itself and the agencies' scientific and economic analyses supporting it. The memos have been seen as a boost for the array of suits filed by states and industry that claim the rule is both substantively and procedurally flawed.

The Corps turned over its memos in response to a Congressional request for materials related to the CWA rule, which Republicans have strongly opposed as an overreach of EPA's authority.

Assistant Secretary of the Army for Civil Works Jo-Ellen Darcy asked legislators not to publicly distribute the letters, noting that they could be used in litigation over the rule and that Freedom of Information Act exempts "pre-decisional" materials from release, but the House panel posted the documents in full online.

By releasing the internal documents, one environmentalist suggests that House Republicans are "obviously doing it to help a particular side in litigation. . . . If I were in the administration I'd be angry, and this is clearly, to me, an indication that you don't give privileged communications to Congress."

EPA would be right to scale back handing over documents to lawmakers in replies to queries about agency policies, says the source. Such a position would be "a normal response. If you have documents that are privileged, and you give them to Congress because of its position of oversight, you risk exactly this."

A second environmentalist says that in light of the House oversight committee's decision, EPA and other agencies seem likely to slow its release of documents to Congress, assert executive privilege more often, or some combination of the two. "Generally speaking agencies do release documents to Congress, but sometimes they assert executive privilege, and you might see those assertions go up in the future," the observer says.

EPW has been pressuring EPA to respond to requests for documents on three recently finalized or pending rules, including for the legal justification underlying the recently published CWA rule -- which details the types of waterbodies EPA and the Corps consider "waters of the United States" subject to regulatory protections (Inside EPA, June 19).

Second is a request for the legal argument supporting EPA's proposed endangerment finding for aircraft GHG emissions, which if finalized will trigger a duty for the agency to craft first-time aircraft GHG rules.

And a third outstanding request for documents centers on allegations that the agency's work with environmental and grass-roots organizations to push back against criticism of the CWA rule may have broken federal lobbying law. EPA has rejected any claims that its work on the regulation was unlawful.

If EPA or the White House does clamp down on responses to Congressional requests it seems certain to spur retaliation from the Republican majority on EPW, which oversees the agency and must approve all nominees for top agency positions before they go to the Senate floor for a vote.

EPA, the Corps and EPW all did not respond to requests for comment on the matter.

Inhofe did not explicitly promise to block EPA nominees in response to slow

production of documents, but he said that it was "very appropriate" for Sen. Dan Sullivan (R-AK) to raise the idea at a June 11 EPW hearing.

Inhofe later questioned whether the committee has any other options beyond blocking nominees to compel a response from EPA Administrator Gina McCarthy the lingering questions the committee has posed both to her and to other agency officials.

"I can assure you that that's what I would do, and what he would do, and what the majority would do, if they don't respond. You have to respond to questions, and there is no other leverage," Inhofe said.

The Senate has already been slow to consider EPA nominees, even after the Democratic majority in the 113th Congress eliminated the filibuster for executive-branch positions.

Most prominently Ken Kopocis -- the agency's de facto top water official whose nomination to head the Office of Water was pending for almost three years -- never received a floor vote, even though then-Senate Majority Leader Harry Reid (D-NV) used his case as an example of the reason for scaling back filibusters.

Even though the White House continues to send some environmental nominees to the Senate, the first environmentalist says administration officials have indicated an assumption that "environmental nominees will never get confirmed" by the GOP Senate. And some nominees, such as Kopocis and acting EPA air chief Janet McCabe continue to lead their offices in an acting or de facto capacity pending their Senate confirmation. -- David LaRoss

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News Headline: Climate change is reshaping Alaska, wildfire experts fear |

Outlet Full Name: USA Today Online
News Text: Climate-change predictions stoke wildfire fears in Alaska as the state wraps up one of its worst wildfire seasons in history. Trevor...

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News Headline: The EPA's Gina McCarthy on climate change and picking a better job title |

Outlet Full Name: Washington Post Online
News Text: ...McCarthy, 60, was confirmed by the Senate in 2013 as administrator of the Environmental Protection Agency. Okay, please...

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News Headline: The U.S. wind energy boom couldn't be coming at a better time |

Outlet Full Name: Washington Post Online
News Text: ...Power Plan, released last week, requires the country to use a lot more renewable energy by the year 2030 — and a lot less coal. And...

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News Headline: If global warming really did pause, the planet seems to have pressed 'play' again |

Outlet Full Name: Washington Post Online
News Text: ...skeptics' number one favorite argument — the notion that in recent years, global warming had slowed down or hit a “pause.”...

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News Headline: Gerson: We need a miracle on climate change |

Outlet Full Name: Washington Post Online
News Text: ...logical conclusion. If climate scientists are right about the pace of global warming, and about the total amount of carbon dioxide...

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News Headline: The melting of Antarctica is bad news for humans. But it might make penguins pretty happy. |

Outlet Full Name: Washington Post Online
News Text: ... Other research , to be sure, has uncovered different mechanisms by which climate change actually seems to threaten penguins — so...

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News Headline: Sell Your Unused Car Battery Power; Save the Planet |

Outlet Full Name: Newsweek
News Text: It may soon pay to drive an electric car. Literally.

As power grids rely increasingly on renewable energy, storing excess power is going to be ever more essential. Solar and wind energy are intermittent sources of electricity, often producing a surplus when they're in full swing, and zero when nighttime comes or winds die down. So grid operators need ways to store excess capacity in down times and tap into it when they need it.

They could build huge warehouses crammed with battery packs for storage, but that would be costly. A much less expensive solution is what's called vehicle-to-grid (V2G) technology: a computerized system that enables owners of electrical vehicles (EVs) to send some of their cars' stored battery power back to an electrical grid--and get paid for it.

One EV battery's capacity is around 10 kilowatt hours of power. So just 30 cars would provide enough power to run around 300 homes. As the number of EVs on the road grows to hundreds of thousands to millions, the potential to store massive amounts of energy in a fleet of EVs is vast. That energy is also very cheap: According to Willett Kempton, who oversees a University of Delaware research team that has pioneered the V2G process, buying power from EV batteries would cost grid operators just a tenth as much as building battery stations with equal amounts of energy.

Earlier this year, Nissan announced it was working with the Spanish utility company Endesa to roll out a V2G system. Meanwhile, Danish startup Nuvve, which has licensed V2G technology from Kempton's Delaware team, is expected to begin commercial operations with two European grid operators and two global automakers during the first half of next year.

An automated system would take power from EV batteries when it's most needed by the grids and at a good price for buyers and sellers. If owners need to take a long trip and can't risk giving up any battery capacity, they could override the system to temporarily stop a grid feed. Kempton says that owners could even earn more from V2G than what it costs them to keep their batteries charged. "The proposition," he says, "is pretty compelling.

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News Headline: A smaller and more restrictive Renewable Energy Fund reopens |

Outlet Full Name: New Hampshire Union Leader Online
News Text: CONCORD — After a brief moratorium, the state has reopened the Renewable Energy Fund, although with new restrictions and less money...

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News Headline: Major General Keynotes Southern Solar Summit on Sept. 10 on Army's Solar Investment |

Outlet Full Name: Advocate Online, The
News Text: ...Maj. Gen. Al T. Aycock will discuss the Army's commitment to expanding its renewable energy holdings, the status of the program and...

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News Headline: Energy-storing batteries will cut peak usage in Glasgow |

Outlet Full Name: Associated Press
News Text: GLASGOW, Ky. (AP) - The Glasgow Electric Plant Board is installing electricity-storing batteries at dozens of homes to help reduce emissions during peak energy demand.

The battery system was produced by Stockton, California-based Sunverge Energy. The devices capture power from the electric grid when demand is lower. When demand peaks and costs are higher, the utility orders the batteries to release power and distribute it to customers.

Sunverge says in a release that the system being installed by 165 homes will help the Glasgow board reach a goal of reducing carbon emissions by 25 percent. The company typically installs its system in tandem with solar panels, but CEO Ken Munson says Glasgow is the first customer to use the batteries in a non-solar model.

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News Headline: Gas pipeline draws fire in Lunenburg |

Outlet Full Name: Sun Online
News Text: ...didn't change. FERC held the scoping meeting to collect comments for an environmental impact statement on the Northeast Energy...

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News Headline: Proposed ban on caged foods could hike prices |

Outlet Full Name: Derry News - Online
News Text: ...in Salem, who said egg prices are already on the rise amid an outbreak of avian flu. "We could get to the point where the supply...

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News Headline: EPA Urged To Weigh Industry Data To Inform Naphthalene Risk Assessment |

Outlet Full Name: Inside EPA
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News Headline: EPA Floats Early Data To Support Future Risk Review Of Flame Retardants |

Outlet Full Name: Inside EPA
News Text: Site License Available Economical site license packages are available to fit any size organization, from a few people at one location to...

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News Headline: INDUSTRY, SBA URGE EPA TO RECONSIDER, NARROW TSCA NANO REPORTING RULE |

Outlet Full Name: Inside EPA
News Text: Industry and federal advocates for small businesses are urging EPA to reconsider aspects of its pending Toxic Substances Control Act (TSCA) data collection rule for nanoscale materials, with industry groups reiterating calls for EPA to re-propose the rule, and the U.S. Small Business Administration (SBA) arguing the plan is overly burdensome.

"Small businesses are concerned that the rule will impose unnecessary and unjustified burdens on them and that alternatives exist that will reduce the economic impact of the rule on small entities while still accomplishing the agency's objective," the SBA's Office of Advocacy says in Aug. 5 comments on the proposed rule. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 183858)

EPA took comment through Aug. 6 on its proposed TSCA section 8(a) reporting and record-keeping rule that would require manufacturers, processors and importers to submit data once to the agency. The rule would also require companies that intend to manufacture a substance that would have been subject to the one-off rule but do not until after after the effective date of the regulation to report to EPA at least 135 days before commencing manufacturing.

EPA issued the proposal April 6 after years of wrangling with the nano industry and White House officials over the scope of the rule. Most recently, industry groups faulted the proposal in a June public meeting. There, the chemical industry association American Chemistry Council's (ACC) representatives urged EPA to withdraw and re-propose the rule, arguing it lacked clarity and scientific backing.

A broad swath of industry groups, including auto manufacturers and semiconductor producers, are backing prior industry arguments in their written comments. They argue that finalizing the proposal could stifle innovation or that EPA lacks authority for some provisions.

"The expansive scope of reporting requirements for commercially available nanoscale substances would unduly burden industry, especially processors, and will put formulated products containing nano-scale substances at a competitive disadvantage," the Consumer Specialty Products Association's comments say.

Although not calling for withdrawal of the rule, SBA's Office of Advocacy is faulting EPA's economic analysis supporting the proposal and calling for changes. The agency wants EPA to broaden a small business exemption, better account for burdens of the rule on processors of nanomaterials, and to issue guidance clarifying an exemption for firms engaged in research and development.

Meanwhile, advocacy groups, including the Center for Food Safety (CFS) and Center for Biological Diversity (CBD) are seeking to strengthen the proposal and calling for additional regulation of nanomaterials, saying reporting alone is insufficient to reduce potential risks to human health and the environment.

"It is imperative that EPA take action now under TSCA rather than relying on a flawed presumption of safety until nanoscale materials have already caused damage to human health or the environment," the groups say. "The scientific evidence indicates nanoscale materials require regulation on their production, distribution, and use."

Federal agencies, including EPA, have long struggled with how to assess and regulate nanomaterials since their unique, technology-advancing properties may also present health and safety risks. EPA has said data collected under the proposed reporting rule will guide its future policies on the substances, including potential regulation of some nanomaterials found to pose risks to human health or the environment

While industry groups are seeking to narrow or postpone a final rule by calling for withdrawal of the current plan, some states have sought stronger measures that would either subject nanomaterials to premanufacture scrutiny -- even if the macrosize material is already on the TSCA inventory and therefore exempt from such scrutiny -- or enable regulators to address risks posed by certain nanomaterials.

The California Department of Public Health has urged EPA to define all nanomaterials as new chemicals, subjecting them to premanufacture scrutiny, while the Washington Department of Ecology, in separate comments, has said a safety determination on nanomaterials' potential risks is needed to ensure regulation can be implemented when needed.

By contrast, the Alliance of Automobile Manufacturers and the Association of Global Automakers, Inc. in joint comments question whether TSCA's definition of a chemical substance clearly grants EPA authority to require reporting on nanoscale versions of bulk substances since their molecular structure is not specific to the nanoscale.

"EPA should reconsider the extent to which it has authority under section 8(a) to require reporting of information related to nanoscale forms of chemical substances which also exist at the macroscale," the automakers say.

In comments posted to a public website in early August, industry groups urge EPA to better clarify which substances are covered by the proposed reporting requirement, expand categories of exemptions, and reduce or eliminate the 135 day notification requirement.

Groups including ACC, the Nanomanufacturing Association, and the Chemical Users Coalition, in separate comments urge EPA to follow a phased or multi-step approach. The groups recommend that EPA first seek reporting from manufacturers and importers of nanomaterials, and from processors later, if necessary, to fill data gaps. Part of the reason, industry officials say, is that processors of nanomaterials do not always know when they receive nanomaterials from suppliers, and that information from manufacturers and importers would likely meet the agency's goals.

ACC and the Nanomanufacturing Association also reiterate calls for EPA to better coordinate with Canadian regulators, which have proposed exemptions from reporting for additional types of nanomaterials.

ACC says industry "is extremely concerned that if the U.S. and Canadian approaches are not more closely aligned, the comparability of information and ability to move forward in a coordinated manner would be at risk and that the reporting burden on industry could be extremely high."

Other groups, including The Nanotechnology Coalition, a trade association affiliated with the Society of Chemical Manufacturers and Affiliates as well as the American Coatings Association (ACA), argue that EPA should base reporting requirements on a substance's potential hazard rather than on physical factors.

"EPA should not require reporting of an entire class of chemicals," ACA says. Rather, "EPA should first evaluate the necessary hazard information, health effects

and data, and then tailor reporting requirements towards those chemicals that may present an unreasonable risk to human health or the environment."

Environmental groups, meanwhile, are urging EPA to strengthen reporting requirements and arguing that reporting alone is insufficient and that further rules are needed. In joint comments, CFS, CBD and Institute on Agriculture and Trade Policy argue that to fully implement TSCA, EPA should issue a Significant New Use Rule (SNUR) and a test rule for nanomaterials, as well as section 6 rules restricting certain substances when necessary.

The SNUR would allow EPA to review and potentially restrict future new uses of nanomaterials before those uses begin, while a test rule would determine whether substances pose an unreasonable risk to human health or the environment. Also, TSCA section 6 allows EPA to limit use of certain substances to address risks.

The advocates also back California state regulators' call to define all nanomaterials as new chemical substances, subjecting them to premanufacture scrutiny. And they urge EPA to eliminate exemptions for certain types of nanomaterials from the reporting rule and to narrow the exclusion for small businesses.

Additionally, the groups say EPA should eliminate a "unique and novel" criteria for identifying reportable substances, calling it vague, and say EPA should provide guidance to help companies determine what substances require reporting under the final rule.

The groups also seek restrictions on businesses' claims of confidentiality, and say EPA should publicize locations where workers are exposed to nanomaterials, and include information collected under the rule in a publicly accessible database. -- Dave Reynolds

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News Headline: Australian sailors wary of Rio debris as much as pollution |

Outlet Full Name: Associated Press
News Text: A 35-person team of Australian sailors, coaches and support crew begin competing in test events this week for next year's Summer Olympics on pollution-plagued Guanabara Bay in Rio de Janeiro, concerned as much about the floating debris that could affect the results of racing as the "horrible" sewage-filled water.

Peter Conde, performance director of Australian Sailing, will be the Australian Olympic Committee's team leader for sailing next year in Rio. He and about 15 sailors, plus coaches and support staff have been in Brazil for two weeks preparing for the test events.

Conde told The Associated Press in a telephone interview that three members of the delegation - a competitor, coach and support person - had become ill in the lead-up to the racing, all with 24-hour stomach upsets.

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News Headline: SENATE REPUBLICANS INTRODUCE LEGISLATION TO SOFTEN EPA LEAD PAINT RULES |

Outlet Full Name: Inside EPA
News Text: GOP senators have reintroduced legislation that aims to restore an "opt-out" to EPA's lead paint renovation rule for some facilities and prevent the agency from expanding the rule to commercial and public buildings until the agency develops a study that justifies the move, among other measures designed to soften the rules.

The legislation, S. 1987, introduced by Senate Environment Public Works & Committee Chairman James Inhofe (R-OK) and GOP Sens. Chuck Grassley (IA) and John Thune (SD) echoes a similar bill Inhofe introduced in the previous Congress -- though that measure failed to gain traction in the then-Democratic Senate. The legislation is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183799)

The new bill targets EPA's 2008 Lead Renovation, Repair and Paint (LRRP) rule, which requires that contractors who undertake renovation or repair projects in homes or child care facilities built before 1978 -- when lead was removed from paint -- be certified in safe lead handling practices. The rule also requires contractors to test for the presence of lead, and to perform the work in ways that reduce exposure to lead dust.

Under the provisions of a legal settlement with environmentalists, EPA is required to determine whether to propose a second LRRP rule extending these provisions to public and commercial buildings. The agency missed a July 1 deadline to reach a decision, and has yet to file a status report with the court setting a new deadline.

Inhofe argues that the existing rule is too broad-reaching, driving up renovation costs in buildings where children and pregnant women are not residents and that the agency has yet to prove that a similar rule is needed for public and commercial buildings, where adults usually work and there are few children present.

"Our bill restores the 'Opt-Out Provision' allowing homeowners to withdraw from the rule if an at-risk population does not reside in the home facing direct damage from lead exposure," Inhofe says in an Aug. 6 statement.

"The bill also prohibits EPA from expanding regulatory control to include commercial and public buildings until EPA conducts a study demonstrating the need

for such action," the statement says.

The bill language regarding the new study EPA must conduct before proposing a public and commercial building rule echoes calls from contractors and buildings managers' groups who argue that EPA has not provided proof that the new rule is needed to protect public health.

While the residential rule is targeted at protecting children, who are particularly susceptible to lead's well-known neurodevelopmental hazards, a rule on public and commercial buildings requires the agency to undertake new risk analyses of lead's effects on adult health.

EPA presented its analyses, based on cardiovascular disease in adults exposed to lead, to a panel of peer reviewers last January. The panel praised the approach but questioned whether it would help agency decision-makers.

Inhofe introduced the bill just a week after EPA and the U.S. Attorney for the Southern District of New York announced the filing of a lawsuit against a New York City contractor working in historic apartment buildings who had "repeatedly" failed to follow the 2008 LRRP rule restrictions, resulting in workers and tenants' exposure to lead dust.

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News Headline: Colorado: Water Near Mine at Pre-Spill Toxicity |

Outlet Full Name: New York Times, The
News Text: The water just below a Colorado mine that poured three million gallons of toxic waste into nearby waterways has returned to pre-spill levels of toxicity, officials said Thursday. The Environmental Protection Agency is still analyzing water farther along the spill's path -- in New Mexico, the Navajo Nation and Utah. Officials in Utah said waste from the mine had probably reached Lake Powell, a major water storage facility for the region. E.P.A. officials have said they will have to monitor the spill's path for years to understand its full effect. The Gold King Mine, near Silverton, burst on Aug. 5 while workers contracted by the E.P.A. were conducting a field investigation of the mine, which had leaked for years. The agency has said it was responsible for the spill. Levels of metals including arsenic and lead jumped in local waterways as the contamination flowed down the Animas River and into the San Juan, angering many who use these rivers for drinking, irrigation and recreational activities. Colorado, New Mexico, Utah and the Navajo Nation declared states of emergency. The rivers remained closed Thursday.

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News Headline: EPA test results show mine spill unleashed highly toxic stew - The Boston Globe |

Outlet Full Name: Boston Globe Online
News Text: ...contained and filtered heavy metals and chemicals from the Gold King mine wastewater accident. By Michael Biesecker Associated Press...

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News Headline: EPA: Water quality returning to normal after Colo. spill |

Outlet Full Name: USA Today Online
News Text: 9:34 p.m. EDT August 13, 2015 FARMINGTON, N.M. — Water quality tests on the Animas River in Colorado indicate heavy metal levels are...

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News Headline: The Latest: EPA chief visits New Mexico to see spill fallout |

Outlet Full Name: Advocate Online, The
News Text: ...the Colorado mine spill (all times local): 8:23 a.m. The head of the Environmental Protection Agency is visiting...

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News Headline: The Latest: Colorado governor drinks river water after spill |

Outlet Full Name: Advocate Online, The
News Text: ...in the Colorado mine spill (all times local): 11:17 a.m. New Mexico's environment secretary is criticizing Colorado's governor for...

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News Headline: The Latest: EPA: High toxic metal levels after mine spill |

Outlet Full Name: Associated Press Online
News Text: ...mine spill (all times local): 12:20 p.m. Sampling results from the U.S. Environmental Protection Agency show high levels of...

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News Headline: Algae bloom fouls Charles River once again |

Outlet Full Name: Boston Globe Online
News Text: ...River in triumph, celebrating the water's long recovery from infamous pollution. But on Thursday, in a reversal that underscored the...

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News Headline: The Latest: EPA chief visits New Mexico to see spill fallout |

Outlet Full Name: Greenwich Time Online
News Text: ...the Colorado mine spill (all times local): 8:23 a.m. The head of the Environmental Protection Agency is visiting...

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News Headline: Down to the wire: Final sewer plant decision iminent |

Outlet Full Name: Hampton Union - Online, The
News Text: ...the clock ticking on Exeter's Administrative Order of Consent from the EPA to begin construction on a new wastewater treatment...

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News Headline: EPA URGES COURT TO REJECT REHEARING BID IN SUIT OVER CWA TESTING MEMOS |

Outlet Full Name: Inside EPA
News Text: EPA is urging a federal district court to deny wastewater utilities' bid to rehear a ruling rejecting the utilities' request for judicial review of agency memos that allegedly mandated strict new testing procedures for Clean Water Act (CWA) permits, claiming the utilities have not met the procedural burden of proving rehearing is warranted.

In its Aug. 11 filing, the Department of Justice (DOJ), arguing on EPA's behalf, says plaintiffs in the suit have not cleared the hurdles necessary to force the "extraordinary remedy" of the court reconsidering its ruling. U.S. District Court for the Eastern District of California Chief Judge Morrison C. England Jr. in a May 15 ruling said that the case was rendered moot after EPA withdrew the contested memos. The filing is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183890)

DOJ adds that even if the procedural steps have been met for rehearing, the utilities

should lose on the merits because, it argues, they are misrepresenting an internal memo from state regulators to claim that California is planning to treat the agency's letters as binding even after the agency withdrew them. "This is not accurate. The internal California memorandum does not make any such statement," DOJ says.

The Southern California Alliance Of Publicly Owned Treatment Works (SCAP) and Central Valley Clean Water Association (CVCWA) filed suit against EPA challenging a series memos to state officials seeking the use of certain toxicity tests in water permits, which SCAP claims amount to an illegal rulemaking approving those tests for CWA use without notice and comment.

England in his May 15 decision said the suit, SCAP v. EPA, was moot after the agency withdrew the memos. But SCAP is now touting a letter written by California environmental regulators that it says shows that the state still plans to mandate the tests outlined by EPA to make the case that the agency memos are having an ongoing effect.

However, in the Aug. 11 brief DOJ says that in order to win reconsideration the utilities must show that new evidence is truly "newly discovered" and that they performed a "due diligence" search for it or similar evidence before the court ruled. So far they have presented no evidence on either point, DOJ argues.

"The only evidence submitted by Plaintiffs is the declaration of Plaintiffs' counsel that addresses when counsel or 'any representative of the Plaintiffs' learned of the internal California memorandum, not even describing how Plaintiffs' counsel received the internal state memorandum. Plaintiffs submitted no evidence regarding when Plaintiffs SCAP and CVCWA themselves, not their counsel, learned of the internal California memorandum," the brief says.

DOJ says SCAP's brief includes no discussion of whether the group performed due diligence, "[T]he only evidence presented was related to Plaintiffs' counsel's knowledge of the internal California memorandum," it says.

Addressing the content of the state memo SCAP presented to the court, DOJ argues that the state is only discussing whether it can use its own discretion on which test methods and statistical analysis to require in permits it issues -- and that the court has already held that challenges to state permit terms belong in state, rather than federal, court.

"A motion for reconsideration 'may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.' . . . Plaintiffs' argument based on [CWA] permit requirements cannot justify reconsideration because this issue has already been litigated," DOJ's brief says.

If SCAP does win reconsideration of England's ruling, it could give the plaintiffs a

new chance to extend a previous victory for challengers to EPA memos in Iowa League of Cities v. EPA, decided in March 2013 by the U.S. Court of Appeals for the 8th Circuit. There, the court unanimously held that a collection of EPA letters and memos, including correspondence between then-acting water chief Nancy Stoner and Sen. Charles Grassley (R-IA), amounted to a substantive change in the agency's wastewater policy, undertaken without notice and comment as required by the Administrative Procedure Act.

In the Iowa League decision, judges said EPA had for all intents and purposes created a new rule by saying it would veto permits that include so-called mixing zones, where higher levels of bacteria are temporarily allowed in waters meant for swimming, or blending, where a portion of peak wet-weather flows is channeled around secondary treatment units, treated using other methods and blended with fully treated wastewater before discharge.

However, EPA has thus far declined to apply that ruling nationwide, leading wastewater groups to sue in District of Columbia federal courts to force the issue. -- David LaRoss

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News Headline: EPA WATER POLICY HINTS AT LIMITS ON AGENCY'S 'INTERPRETATIVE' RULEMAKING |

Outlet Full Name: Inside EPA
News Text: EPA's recent proposed "interpretive" rule aiming to streamline tribes' applications to issue Clean Water Act (CWA) permits hints at the agency potentially seeing some limits on its authority to issue new interpretations of existing rules despite a Supreme Court ruling that says such policies do not need to have formal notice-and-comment.

The ruling would "give cover to the EPA if it chose simply to announce the interpretive change without notice and comment," one legal source says. "Yet, EPA seems to have deliberately chosen what might be described as the safe and conservative approach here by apparently going the full public comment route," the source adds.

A second legal source says that EPA's decision to take comment on the proposed tribal water quality standards (WQS) rule might suggest some concern within EPA that agencies' "latitude with regard to interpretive rules may not be limited," cautioning that despite the high court's ruling the "lay of the land is still uncertain."

The agency in its Aug. 7 proposed interpretive rule aims to streamline the process for tribes to apply for CWA approval to set enforceable WQS. EPA is taking public comment through Oct. 6 on its proposed interpretation of section 518 of the CWA as

establishing a congressional intent for EPA to delegate CWA authority to eligible tribes. The proposal is available on InsideEPA.com. See page 2 for details. (Doc. ID: 183805)

Under the Administrative Procedure Act (APA), agencies must follow notice-and-comment procedures for major rulemakings but interpretive rules that only state the agency's interpretation of the text of an existing regulation are exempt -- although the legality of not taking comment on the rules has been the subject of debate.

Until earlier this year the U.S. Court of Appeals for the District of Columbia Circuit, which hears challenges to most major EPA rules, had required agencies to follow notice-and-comment procedures when revising an interpretive rule, as long as the existing interpretation had been "substantively relied on" in other proceedings.

But the Supreme Court in a 9-0 decision, issued March 9, Perez, et al., v. Mortgage Bankers Association, et al., overturned the D.C. Circuit's doctrine. Writing for the high court, Justice Sonia Sotomayor said the D.C. Circuit's doctrine "is contrary to the clear text of the APA's rulemaking provisions, and it improperly imposes on agencies an obligation beyond the 'maximum procedural requirements' specified in the APA."

Observers say the high court ruling should have given EPA leeway to issue the tribal WQS rule without seeking notice and comment. But the agency's decision to seek input on the proposal before crafting a later final version of the rule suggests EPA might take a more conservative approach on such rules, sources say.

EPA acknowledges in the Aug. 7 Federal Register notice announcing the rule that it is not subject to notice and comment requirements under the APA, but says, "EPA decided to provide notice and an opportunity for comment to increase transparency and to allow interested parties to provide their views."

The process is different from an approach the agency took in an earlier interpretive rule, finalized jointly with the Army Corps of Engineers in March 2014 as a supplement to the agencies' controversial regulation clarifying the CWA scope. That interpretive rule, which the agencies issued in final form without first proposing for public comment, clarified which agricultural conservation practices from CWA dredge-and-fill permits, but drew a hostile reception and lawmakers eventually approved a legislative rider forcing the rule's withdrawal.

EPA did not respond to a request for comment by press time.

The first legal source says that EPA in its CWA tribal authority proposed rule may be seeking some added insulation for another legislative reversal if the regulation prompts opposition from Congress.

But the source adds that, "You might also speculate that the EPA is seeking to avoid

the sense of concern if not criticism that underlay some of the Justices' statements" in the Perez opinion "about agencies merely using the interpretive moniker in order to skirt public comment for effectively substantive actions."

The source's comments about other justices refers to concurring opinions written by Justices Antonin Scalia, Samuel Alito and Clarence Thomas. Those justices joined the majority opinion in Perez but called for a more sweeping decision that would overturn earlier Supreme Court cases requiring judges to defer to agencies' interpretations of ambiguous regulations, such as the Department of Labor rule at issue in Perez.

The conservative justices argued that the earlier high court decisions have allowed EPA and other agencies to effectively change their rules on a whim by giving regulatory interpretations the force of law as long as the rule in question is ambiguous. As a result, the various opinion in Perez create a split among the high court justices on whether courts should defer to agencies on interpretation of ambiguous rules.

For example, Scalia in his concurring opinion in the Perez case wrote, "Because the agency (not Congress) drafts the substantive rules that are the object of those interpretations, giving them deference allows the agency to control the extent of its notice-and-comment-free domain. To expand this domain, the agency need only write substantive rules more broadly and vaguely, leaving plenty of gaps to be filled in later, using interpretive rules unchecked by notice and comment. The APA does not remotely contemplate this regime."

The Supreme Court's 6-3 ruling issued in June in King v. Burwell in June, which agreed with the administration's interpretation of President Obama's health care law, has been flagged by observers as signaling justices trying to limit the deference they give to all agencies. In King, the court held that even though language on the Affordable Care Act's tax credits was ambiguous, the application of that provision was so fundamental to the act that Congress could not have intended the Internal Revenue Service (IRS) to choose an interpretation on its own.

The key element in King is that the "majority refused to give IRS Chevron deference, suggesting limits to agency discretion, the second source says, adding that the "whole area of agency discretion is not closed," and EPA may be taking precautions in the Aug. 7 proposal in the hopes of avoid a future adverse judicial ruling. Chevron refers to a Supreme Court ruling that sets the general test for deferring to agencies' interpretation of statutes.

The first source, however, cautions against reading into EPA's "safe" approach in the proposed rule, saying that "until there is a track record of consistently doing so, I would hesitate to expect broad use of this approach."

The source also notes that EPA has not committed to fully subjecting the interpretive

rule to all APA procedures, including whether it must take into account each substantial comment. "Thus, it may still be hedging its bets as to whether and to what degree it will actually deal with the public comments it receives." -- Bridget DiCosmo

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News Headline: The Latest: EPA Chief Visits New Mexico to See Spill Fallout |

Outlet Full Name: New York Times Online, The
News Text: ...in the Colorado mine spill (all times local): 8:23 a.m. The head of the Environmental Protection Agency is visiting...

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News Headline: Mine waste has fouled the Animas River before |

Outlet Full Name: USA Today Online
News Text: ...first occurred. But it did happen again last week after U.S. Environmental Protection Agency workers accidentally...

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News Headline: State awards more than $12M in water constructions loans |

Outlet Full Name: Associated Press
News Text: NASHVILLE, Tenn. (AP) - State officials say two Tennessee communities and three utility districts have been approved to receive more than $12 million in low-interest loans for water infrastructure improvements.

Gov. Bill Haslam and Tennessee Department of Environment and Conservation Commissioner Bob Martineau made the announcement this week.

The State Revolving Fund Loan Program provides loans that help communities, utility districts and water and wastewater authorities finance projects that protect Tennessee's ground and surface waters and public health.

Loans are used to finance the planning, design and construction of water and wastewater facilities.

Recipients of the loans are located in DeKalb, Henry, Putnam, Tipton and Wilson counties.

Since its inception in 1987, the State Revolving Fund Loan Program has awarded more than $1.6 billion in low-interest loans.

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News Headline: Attorney: City wrong to eliminate irrigation meters |

Outlet Full Name: Hampton Union - Online, The
News Text: ...also gave city staff "an opportunity to look at our practices," concerning sustainability and water conservation. The...

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News Headline: EPA: Colo. Contaminated Water Being Treated |

Outlet Full Name: USA Today Online
News Text: EPA chief Gina McCarthy says that contaminated water at a Colorado gold mine is being treated before being released into a stream and water...

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News Headline: Tribe warns residents not to use EPA forms after spill |

Outlet Full Name: USA Today Online
News Text: ...Russell Begaye has warned tribal residents to avoid using the U.S. Environmental Protection Agency's form for claims of...

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News Headline: EPA says Animas River on the mend after toxic spill |

Outlet Full Name: USA Today Online
News Text: ...Colorado is on the mend, according to the state health department and the EPA. Authorities are so confident the water is improving, they...

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